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The

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"Pro Ecclesia Dei." *St. Augustine.*

Contents:

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1a die Octobris, 1961.

Official Documents

SACRED CONGREGATION OF RITES

Declaration.

Commemoration of a feria IV class.

As not a few doubts have been submitted to the Sacred Congregation of Rites concerning the commemoration of a feria IV class in Masses of a feast, in the wider sense, and also in votive Masses, this Sacred Congregation, with a view to greater simplicity in the whole matter of commemorations decided to declare: a feria IV class is never to be commemorated in festive Masses, or votive Masses, or even in conventual Masses.

Accordingly it decreed the following changes in the Code of Rubrics:

(a) n. 26 is to read: "All ferias, not mentioned in nn. 23-25, are IV class ferias: these ferias are never commemorated."

(b) n. 289 is to read at the beginning: "On all ferias IV class . . . one of the following may be said, without a commemoration of the feria."

(c) The second part of n. 299 is to read: "On other ferias the Mass of the preceding Sunday is said, unless the rubrics prescribe otherwise."

Given at Rome from the Office of the S. Congregation of Rites, 27th May, 1961.

† C. CARD. CICOGNANI, Bishop of Frascati, Prefect.

HENRY DANTE, Secretary.

Prot. N. 2671/61

SACRA CONGREGATIO DE PROPAGANDA FIDE MUTANDA ET ADDENDA IN FORMULA FACULTATUM DECENNALIUM

Propter Novum Codicem Rubricarum (N. C. R.) et propter nonnulla decreta recentia quaedam in Formula Facultatum decennalium sunt mutanda.

Ad fac. n. 2.—Addatur NOTA: Episcopus, qui olea sacra conficit extra feriam V in Cena Domini, dicere debet Missam Chrismatis ex Ordine Hebdomadae Sanctae instauratae; (cfr. Adnexum I et II) cum variationibus ibidem descriptis.

Ad fac. n. 3.—Addatur NOTA: Sacerdos, qui vi huius facultatis conficit oleum infirmorum servare debet ritum descriptum in Adnexo III.

Fac. n. 9.—legatur: "Permittendi thurificationem in Missis lectis cum cantu" (Cfr. N. C. R. n. 426, coll. n. 271).

Fac. n. 16.—legatur: "Permittendi ut in ecclesiis ter infra hebdomadam, extra Quadragesimam, Missa lecta de Requie celebrari possit, etiam diebus liturgicis IV classis temporis natalicii, necnon omnibus diebus liturgicis III classis, diebus tamen, quibus eadem Missa a rubricis permittitur, computatis."

Fac. n. 17.—legatur: "Concedendi ut toto anni tempore Missa de Dominica celebrari possit diebus infra hebdomadam, cum omnibus iuribus ipsius Dominicae, modo ne occurrat festum primae classis."

Fac. n. 55.—legatur: "Concedendi ut, extra chorum, recitari possit matutinum cum laudibus diei sequentis statim post meridiem."

Fac. n. 60.—legatur: "Permittendi ut, servatis rubricis, in dominicam aut immediate praecedentem aut immediate sequentem, transferatur solemnitas festorum, quae secundum can. 1247 sunt ferianda, sed legitime abolita."

Fac. n. 65.—legatur: "Si sit Episcopus. utendi throno cum baldachino et cappa magna in Pontificalibus; necnon permittendi presbyteris, in ecclesiis suae iurisdictionis celebrantibus, ut sui nominis tanquam Antistitis sive in precibus sive in Canone Missae mentio fiat: quatenus hoc a iure concessa non fuerint."

Fac. n. 67.—legatur: "Vestiendi paramentis pontificalibus, rationabili de causa, sine rocheto" (Cfr. N. C. R. n. 134).

ADNEXUM I.

SACRA RITUUM CONGREGATIO
N. P. 55/960

DECRETUM

Attentis peculiaribus Missionalis Apostolatus adiunctis, Sacra Congregatio de Propaganda Fide decennali facultate Episcopis creditae sibi Ditioni tributa indulsit, ut Episcopus olea sacra conficere valeat, si necessitas urgeat, etiam extra Feriam V in Cena Domini, atque ut sacerdotes, de licentia loci Ordinarii, conficere possint oleum infirmorum, in casu tamen verae necessitatis, id est, si oleum infirmorum, ab Episcopo benedictum, haberi nequeat.

Quapropter idem Sacrum Consilium christiano nomini propagando ex Sacra Rituum Congregatione exquisivit:

(1) Quaenam Missa dicenda est ab Episcopo, sacra olea extra Feriam V in Cena Domini confecturo;

(2) quis ritus servandus a Sacerdote oleum infirmorum, si necessitas urgeat, confecturo.

Et Sacra eadem Rituum Congregatio, vigore facultatum sibi a SS.mo Domino nostro JOANNE PAPA XXIII tributarum, propositis dubiis respondit:

Ad I. Dicenda est Missa Chrismatis ex Ordine Hebdomadae Sanctae instaurato, cum variationibus in adnexo exemplari descriptis.

Ad II. Servetur ritus, prouti in adiecto prostat exemplari.

Contrariis non obstantibus quibuslibet.

Die 14 Novembris 1960.

(Sig.) ✠ CAIETANUS Card. CICOGNANI
S. R. C. Praef.
HENRICUS DANTE, S. R. C. a Secr.

ADNEXUM II.

SACRA CONGREGATIO RITUUM Prot N. P. 55/960

ADNEXUM I.

VARIATIONES IN MISSA CHRISMATIS QUANDO DICITUR EXTRA FERIAM V IN CENA DOMINI

(1) *Antiphonae ad Introitum, extra tempus Passionis, addatur* Gloria Patri.

(2) *Tempore Septuagesimae et tempore quadragesimali dicatur: Tractus Ps.* 88, 20-22: Imposui coronam potenti; extuli

electum de populo. *V.* Inveni David, servum meum, oleo sancto meo unxi eum. *V.* Ut manus mea sit semper cum eo, et brachium meum confirmet eum.

Tempore paschali dicatur:

Alleluia, alleluia. *V. Ps.* 44, 8: Diligis iustitiam et odisti iniquitatem; propterea unxit te Deus, Deus tuus, oleo laetitiae. Alleluia. *Ps.* 88, 21: Inveni David, servum meum, oleo sancto meo unxi eum. Alleluia.

Extra tempus paschale et tempus quadragesimale, post Graduale addatur:

Alleluia, alleluia. *V. Ps.* 44, 8: Diligis iustitiam et odisti iniquitatem; propterea unxit te Deus, Deus tuus, oleo laetitiae. Alleluia.

(3) *Omittantur Rubricae nn.* 14 *et* 15 *ex ordine Missae Chrismatis.*

ADNEXUM III.

SACRA CONGREGATIO RITUUM Prot N. P. 55/960

ADNEXUM II.
RITUS BENEDICENDI OLEUM INFIRMORUM

a Sacerdotibus, quibus ex peculiari Indulto Apostolico facultas facta est, servandus.

Sacerdos, superpelliceo et stola violacea indutus, dicit:

Exorcizo te, immundissime spiritus, omnisque incursio satanae, et omne phantasma: in nomine Pa✠tris, et Fi✠lii et Spiritus✠Sancti; ut recedas ab hoc oleo, ut possit effici unctio spiritalis ad corroborandum templum Dei vivi; ut in eo possit Spiritus Sanctus habitare, per nomen Dei Patris omnipotentis, et per nomen dilectissimi Filii eius Domini nostri Jesu Christi, qui venturus est iudicare vivos et mortuos, et saeculum per ignem. *R.* Amen.

V. Dominus vobiscum. *R.* Et cum spiritu tuo.
Oremus.

Emitte, quaesumus, Domine, Spiritum Sanctum tuum Paraclitum de caelis in hanc pinguedinem olivae, quam de viridi ligno producere dignatus es, ad refectionem mentis, et corporis; ut tua sancta bene✠dictione, sit omni hoc unguento caelestis

medicinae peruncto tutamen mentis et corporis, ad evacuandos omnes dolores, omnes infirmitates, omnemque aegritudinem mentis et corporis, unde unxisti Sacerdotes, Reges, Prophetas et Martyres; sit Chrisma tuum perfectum, Domine, nobis a te benedictum, permanens in visceribus nostris. In nomine Domini nostri Iesu Christi.

SACRED CONGREGATION OF THE HOLY OFFICE
WARNING

Through praiseworthy enthusiasm for Biblical studies, assertions and opinions are being spread in many quarters, bringing into doubt the genuine historical and objective truth of the Sacred Scriptures, not only of the Old Testament (as the Supreme Pontiff Pope Pius XII had already deplored in his encyclical letter *Humani Generis, cf.* Acta Apostolicae Sedis XLII, 576), but even of the New, even to the sayings and deeds of Christ Jesus.

Since assertions and opinions of this kind are causing anxiety among both Pastors and faithful, the eminent cardinals who are charged with preservation of the doctrine of faith and morals recommended that all of those who deal with the Sacred Scriptures either in writing or orally, should be warned always to treat such subject-matter with due discretion and reverence and always to have before their eyes the doctrine of the Fathers of the Church and the mind and teaching authority of the Church, lest the consciences of the faithful be disturbed or the truths of the Faith be injured.

N.B. This Warning is issued with the agreement of the most Eminent Fathers of the Pontifical Biblical Commission.

Given at Rome, from the offices of the Holy Office, 20th June, 1961.

SEBASTIAN MASALA, Notary.

A Certain Question of Truth

Case:

> Alfred, having broken and entered a dwelling-place and stolen various goods therein, is arrested and charged with the crime. At his trial before judge and jury evidence so strong is offered against him that his conviction is morally certain (so far as any result can be certain with a jury), unless he can explain that evidence away. May he in good conscience:
>
> (i) concoct a false tale of his whereabouts and doings at the relevant time, and a false explanation of how he came by the goods? And if that is not sure to avail him, may he:
>
> (ii) say the prosecution's evidence is false (we assume for the purposes of our case that it is true), or deny that he made the confession that he really did make, thereby accusing, at least implicitly, the prosecution's witnesses of perjury?
>
> (iii) may he take oath and swear to these things?

The question which requires our examination is above all Question (i). Question (ii) need be discussed only if the conduct proposed in Question (i) is lawful. Clearly, if the false explanations of Question (i) are wrong morally, the false accusations of opposing witnesses in Question (ii) are all the more forbidden.

Question (iii) does not really add any complications to the problem. If the false explanations are lies, then swearing to them is perjury; if they are not, then there can be no perjury. For though there may be a venial sin of imprudence in swearing unnecessarily to what is in itself veraciously uttered, there is no sin against truth; and the sin against truth is of the essence of perjury.[1] In this case now under consideration, Alfred certainly has good cause for swearing to his story if he is allowed in conscience to say it at all. That is, the only moral problem is: are his words lies?

We come then to discuss Question (i). The instinctive reaction of any good conscience is to say, "No, he may not tell a false story. These things are lies, and if he says them on oath, then that is perjury." The mind trained by a course in Moral Theology will hesitate and be wary of its answer. Certain phrases may hurry through the head: "No-one is bound to betray

himself," "No-one would judge his words to mean what they said," "Mental Restriction," and so on. The prudent counsellor will then of course look up his books. In some he will find little to help him; in some he will find puzzling statements about a duty in former times to admit the truth when questioned by the judge, a duty that modern civil laws and modern Canon law no longer impose on him; and in a few he will find a clear and apparently conclusive answer to the questions.

He will find, for example, in Génicot's well-known manual, whose standing and sobriety none would question, the following sentences that say apparently all he needs to know:

> "The accused may always deny a crime that he has committed. For this denial in the circumstances is only a conventional way of speaking, by which he declares that he has not been convicted of the crime now charged,—and the same is to be said *of the explanations* made up by him to prove his innocence: because no-one can prudently trust them, except in so far as what he alleges is established by other supporting proof."[2] The italics are Génicot's.

Vermeersch says much the same thing. Since no modern laws compel the accused to confess his crime, his denial is in the circumstances not to be considered a lie.

> "If he can dissimulate his crime, the words by which he does so are not to be considered lies. For from the circumstances it is clear they were not uttered seriously. Where, however, there is no lawful interrogation, either because of lack of competence[3] or because the interrogation has contravened the form prescribed by law, then clearly it is all the more justifiable to use such modes of speech."[4]

In other words, denial or dissimulation may be effected by whatever words are necessary in the circumstances of the particular case; and the implication of the final part of Vermeersch's remarks is that this may be done even if the judge is acting according to law.

Elsewhere, in his chapter on Lying, he is more explicit still:

> "Lying ceases, if the *circumstances* take away the formal signification of the words . . . as when in our secular courts you deny your guilt or tell a made-up story in defence: the accused cannot be judged in such a concocted defence to be disclosing his mind by the words which he utters, but must be judged to be using, as it were, a stratagem of warfare."[5]
>
> The italics are Vermeersch's.

It is not easy to say whether many other authors would support precisely these statements. A number certainly do agree that in secular criminal courts today the judge interrogates the prisoner solely in order to inculpate him from his own mouth.[6] On their principles it would seem that they and many others would allow the false story. However, without passing any judgment on the truth or probability of the doctrine of Génicot and Vermeersch, we can accept it for the discussion of this case as possibly correct.

If we apply this doctrine to the case of Alfred the housebreaker, we cannot say that it would be wrong in practice for him to tell his false tale, as in Question (i); that is, it would not be a lie. And if he can tell it and not lie, then, in his present serious position at any rate, he can swear to it too, and he will not be guilty in conscience of perjury.

If we apply this doctrine to the case of Alfred! But Alfred is being charged in London or Adelaide or Sydney, not in Paris or Frankfurt or Rome. That, so I hope to show, makes all the difference. For the conclusion of this article is that Alfred in our country may neither swear to nor even merely tell a false story in defence; that the doctrine of the authors referred to is a doctrine formed in a framework of criminal prosecution very different both in history and modern practice from our own; that statements by Continental moral writers can be understood only when that history and practice are understood; and that in England and in each of the Australian States the accused is not able to use broad mental restriction when the prosecution has acted fairly and put a true case against him. In other words, even if the doctrine of Génicot and Vermeersch is correct, our criminal procedure is so different from theirs that there is no room with us for the application of the doctrine.

The argumentation that follows is given here summarily, in advance. There is no place for mental restriction with unambiguous words when no right of the speaker (or, in appropriate cases, of someone else whom he is protecting) is being attacked. The lawful civil authority in putting true evidence against a man is infringing no right of his. In the Continental system (generally speaking) notable elements remain of the inquisitorial procedure which prevailed in canonical and European secular criminal actions from the thirteenth century onwards. Accordingly, the same official not seldom has both a judicial

and an investigatory capacity. Questions asked in the latter capacity may infringe an accused man's right not to be made to betray himself; it is of these questions that the moral theologians whom I have quoted are speaking. In England and Australia on the other hand (and, to the best of my belief, in each one of the United States), an accused man may not only not be compelled by the court to speak, but he cannot even be questioned unless he freely submits himself to this. If he speaks, he speaks freely, and then must speak the truth.

This argumentation must now be considered in detail.

The two key-questions in the analysis to be made are those of lying and mental restriction, and of the right of an accused person not to be forced to betray himself.

THE NATURE OF LYING AND BROAD MENTAL RESTRICTION.

One can well shrink from this ever restless question—this most difficult and murky of questions, said St. Augustine, which wearies even the most learned.[7] It has caused perplexity through the centuries,[8] and even today great efforts are being made to analyse and define lying again.[9]

Fortunately it is not necessary to examine the whole question. To attempt a disentangling and a clarification of the doctrines of modern moral theologians on lying and broad mental restriction would be a work well worth while, but this is not the place for the attempt. A study of the authors can scarcely fail to produce and almost invariably does produce a vast sense of confusion in students of theology: the writers may be clear to themselves about their principles and terminology, but in this subject at any rate they do not, generally speaking, convey that clarity to the reader. I make these remarks here not primarily to attack nor even to draw attention to a matter that is a great source of trouble to priests and students, but to indicate one or two points in which this confusion directly affects our present case.

I believe writers can be divided broadly into three groups. Naturally there are differences of opinion within the groups, and there is a moving from group to group. No summary as simple as this can hope to do justice to them. My purpose here is only this: to show what the limits are of what will be permitted by Catholic moralists, especially by those who go furthest in allowing false speech; secondly, to show how the indiscriminate

use of terminology and "principles" between groups can cause not only confusion but harm.

The first group, generally older writers, will allow broad mental restriction only where the words in themselves or the words in the circumstances are really ambiguous, containing the true meaning as well as the false. A "just cause" is required, else there will be a lie in using this double-meaning speech with the knowledge that the false meaning is likely to be taken. Untrue statements which in their words and in the circumstances are unequivocal cannot be allowed. Even "conventional" replies, of the "Mr. X is not at home" and "I don't know" type, are justified only on these principles. Even where the questioner is in bad faith this opinion will not permit unambiguous false words. This group would permit Alfred in our case to say, "Not Guilty;" for this is a conventional expression with the true meaning, "I do not admit it. You must prove it." But it would not permit him to concoct a tale which in no way "contains the truth" of what he really did.

Though the expression "broad mental restriction" is now commonly used for all opinions and theories by Catholics on this matter, it is really only to this first group that it should be applied. If it has any right meaning at all, which Vermeersch and others deny, it is for this group only.[10]

The second group, to which apparently many belong, goes further. It will allow words to defend the right of secrecy (if no other defence will do—silence, evasion, or equivocal speech), provided that if the words are unambiguous the circumstances in some way show that an answer is being rightly declined. Most writers keep the expression derived from Group One, that the circumstances must somehow "contain the truth"; but the expression now very frequently seems to mean only that the circumstances show that the respondent is not committing his mind to what he says, and is refusing to answer because he is not bound to.[11] (A comment on the way in which this doctrine is taught will be made below.) Given these circumstances, then, Group Two will hold that not only conventional expressions may be used, but other univocal statements necessary to defend the secret.

The third group goes further again. It will allow speech necessary to defend a right, whether the circumstances knowable by the questioner and others concerned show that a right is being

defended or do not show it. There are again different ways of expressing and justifying this.[12] Vermeersch, for example, holds that the questioner who trespasses on the right of secrecy is an unjust aggressor, and may accordingly be repelled by whatever words are needed. Such protective speech may be employed even against a questioner who is in good faith, for one may guard oneself against material as well as formal aggressors.[13] Father Ledrus, also in the third group, criticizes Vermeersch's position. He himself maintains that if the right cannot otherwise be protected against the questioner, the relations of trust are suspended and there is consequently no formal locution, no implicit asseveration that what one says is true. For Father Ledrus, if false speech is used against a *male fide* questioner, or to safeguard an obligatory secret against even a *bona fide* questioner, the speaker is not acting improperly; if however it is used against a *bona fide* questioner intruding on a secret one is entitled but not bound to conceal, there is something *minus honestum,* though it is not a lie.[14] There is then in this third opinion no need for the reply in some way to "contain the truth." What is required is that in the circumstances the speaker *is not bound* to tell the truth. Quite possibly the questioner will not know or even be able to know these circumstances, but the respondent is still justified if one who did know them would realize that he was not obliged to commit himself to the truth of his words.[15]

In words that are often quoted, Génicot puts the point that is common to Groups Two and Three, so far as any rate as his words go:

> "Whatever way the thing is to be explained, this at least cannot be doubted: that there must be available to all, not only to the educated but also to the untaught, *a practical means of guarding their secrets* from an importunate questioner. Hence, given the need for guarding a secret, one should not be scrupulous, but can unhesitatingly choose a simple way of answering which seems necessary for the keeping of the secret, although perhaps he does not distinctly see how from the words themselves or the circumstances the true sense is contained in his speech." The italics are Génicot's.[16]

He might add, I believe, consistently with that opinion as given here and as elaborated in the passage quoted above and in the rest of his treatment: ". . . or even if the true sense is not

contained at all." Much the same practical advice is given by Merkelbach, but his whole context shows that he requires the truth to appear of, "I am refusing to answer." He expressly rejects the doctrine of Vermeersch.[17]

Groups Two and Three, therefore, remit us to the further question: is there a right at stake or not? If so, it may be defended by false speech (if no other way will do), and there will be no lie; if not, false speech will be lying.

So far as the solution of our case is concerned, that is all that need be said of lying and mental restriction. For no Catholic moralist of any opinion, group or school, not even one whose tolerance is widest, would allow serious false speech whose words were unambiguous unless a right was being defended. However, because the crossing of terminology between groups can be misleading, it is necessary to add a little on that subject.

Most unfortunately, members of the second group have frequently taken both terminology and "principles" from the first group without looking to their aptness in their new setting. For one thing, as mentioned above, there is no "mental restriction" in Groups Two and Three when the words are unequivocal (and it is only these we are concerned with); the term is not suitable for these groups, yet it is nearly always used for any lawful false speech. Again, Group One rightly requires "just cause" to permit speech conveying both true and false meanings when the hearer is likely to take the false one: without "just cause" the locution is a lie. Group Two's need to defend the right to secrecy is itself the justifying cause.[18] Nevertheless, most writers still put down "just cause" as necessary for the veracious use of the unequivocal false speech they are permitting.[19] If it remained at that, it would be a text-book puzzle and no more. Many in addition in Group Two will say or seem to say that broad mental restriction may be used when the circumstances show that the speaker cannot be taken to mean what he says, or some similar expression. If some of these ways of putting things are coupled together, as they easily can be and undoubtedly frequently are by students and ordinary consultants of the text-books, the results of that coupling can be disastrous. Furthermore, for Group Two's writers to allow whatever speech is necessary to defend the right and yet retain Group One's requirement that the speech in the circumstances should "contain the truth," means that the sense of "contain

the truth" must at times be ridiculously distorted. Very often, even when "positive" things are said and a false "positive" impression given, as in Alfred's tale, it can have no meaning but, "The speaker need not answer truly". It would be better then simply to say that. Let us now return for a moment, however, for a fuller examination of two of these points, which can be taken together.

We may note first that when the writers of Group Two require that the circumstances show at least that the speaker is "declining to answer," they mean that the circumstances must show that he is not bound to tell the truth, not merely that he is not telling it. I believe that one can reasonably object that some writers obscure this point in their expositions. To say or imply that broad mental restriction may be used when the circumstances show that one cannot prudently trust the speaker is at best not clear.[20] It could mean, correctly, that one cannot prudently trust him because in the circumstances he is justified in not guaranteeing his words as a revelation of his mind; or it could mean, wrongly, that one cannot prudently trust him because in the circumstances he is not worthy of trust. It is true that if he is not worthy of trust one acts wisely in not trusting him, but that does not free him from his duty of trustworthiness and veracity. To hold that it does would mean that a well known liar could never lie again, and that any advantage to be gained from false speech would release a speaker from the duty of telling the truth if the hearers were aware of the position. No Catholic theologian or philosopher that I know of, certainly none today, holds such a doctrine. There is no Catholic teaching that broad mental restriction may be used simply to extricate oneself from a difficulty.

Next, we may note that the transferring of the need for "just cause" from Group One, where it is rightly demanded, to Group Two, where it is supererogatory, can be more than perplexing to the reader. Once you apply the need for, and then the sufficiency of "iusta causa," "vera utilitas," "proportionata utilitas," "verum incommodum vitandum" and so on (to quote from current books) to the Group Two doctrine of justification in circumstances showing defence of a right, and still more if you apply it to Group Three's doctrine, then only a little inexact thinking or incomplete understanding or hasty reading or careless expression will lead you to say (forgetting that there

must first be a *right* needing defence): "Broad mental restriction may be used when the circumstances show I am not telling the truth;" or "when no-one would think I am telling the truth;" or "when they show it would be to my advantage not to tell the truth;" or "when they show I am not to be taken as meaning what I say." Circumstances may indeed show that one is probably not telling the truth, but that does not remove the obligation to tell it. All professedly serious speech carries with it a guarantee to speak truly, unless (in the opinion of Group Two) the circumstances show or (as Group Three would put it) the facts are that there can be no such guarantee. The guarantee does not cease merely because the speaker's interest in false speech is manifest, nor because few or none will believe him. The conclusion one can slip into is something like this: here you have circumstances that show the speaker may not mean these words; secondly, you have an advantage to the speaker in using these words; therefore he may use them and not lie. No author dreams of teaching this. Yet I think it no exaggeration to say, speaking with the memory of many conversations, that quite incorrect and harmful doctrine is fairly widely held. It is easy to fall into this doctrine, because it is hard to know precisely what the principles of the moralists are.

Alter some of the examples just given to: "Broad mental restriction may be used when the circumstances show I *need* not tell the truth" (Group Two); or "when the position is that in this case I *need* not mean what I say" (Group Three), and you have a very different doctrine.

All theologians to my knowledge limit their consideration of broad mental restriction to the case where the speaker is being interrogated. This is also their position when they discuss the precise case of an accused person. Possibly the words of Génicot and Vermeersch in the early citations in this article have a more general literal meaning, not limiting the accused's lawful concocted explanation to cases where he is questioned; but as against this two things must be said. Firstly, it seems clear that they are actually speaking of cases of interrogation only, for they consider the matter according to their legal system.[21] Secondly, what is certain is that they and all will not allow false speech except when a right is at stake. Unless the speaker is defending a right, other objective circumstances, for example, fear, self-interest, will not remove the speech from lie to broad

mental restriction. If they were to suffice, we could delete "officious" lies almost entirely from our books, and many "pernicious" lies too. Self-interest, even self-preservation as such, does not justify false speech; and broad mental restriction is a means provided by nature not for defending everything, but for defending what I must or may defend.

So far then we have this. Group One will not allow Alfred to tell his tale. Groups Two and Three will allow him if it is for the defence of a right which is being unjustly attacked, where no other defence will do; outside this case not even these groups will allow him. Granting for the argument that the opinion of Groups Two and Three is solidly probable, we come to the next step towards the solution, namely, to see what the rights of accused persons are, and whether any right of Alfred is being infringed.

THE LAWFUL CIVIL AUTHORITY IN PUTTING TRUE EVIDENCE AGAINST A MAN IS INFRINGING NO RIGHT OF HIS.

A perfect society has the right to punish its guilty members. The guilty member has no right not to be punished; and no right consequently not to have true evidence presented against him. This needs no proving here. A different question is whether the method of obtaining or presenting that evidence infringes his right not to be compelled to betray himself, if he has such a right. This is a procedural question, a question of fact, and the answer is variable according to the practice of criminal procedure and trial in different societies.

HAS AN ACCUSED, GUILTY PERSON A RIGHT NOT TO BE COMPELLED TO BETRAY HIMSELF?

This is that "quaestio celebris et difficilis" which has been so earnestly debated by moralists and canonists since the time of St. Thomas; and if it is no longer an urgent speculative question today, that is not because there is substantial agreement on the answer, but because the procedural laws of modern societies remove it largely from the list of practical questions.[22] The historical controversy and its result in morality today could, I believe, be accurately summarized as follows:

(i) No authoritative Christian writer has ever taught that an accused person must answer truly all and any questions about his guilt put to him by the court; but the point of dispute is

whether he must answer them when they are lawfully put. That is, if the law of the relevant society does not authorize the judge or other official to ask questions and also oblige the accused to reply, then there is no duty in conscience to give an answer. If silence would betray, and no evasion and so on would suffice, broad mental restriction could be used. The position is exactly the same if the judge is indeed allowed to question, but no duty of answering is imposed on the suspect.

(ii) If the law does purport to lay such a duty of confession on the suspect, what then? St. Thomas Aquinas held that the guilty man, when lawfully questioned under such a law, was obliged to tell the truth, at no matter what cost to himself.[23] This opinion still has supporters today.[24] There is strong reason for believing that St. Thomas was influenced in this teaching by the tradition of Roman law.[25] The Roman State, in its earlier and later stages, though not in the final century of the Republic, had allowed its magistrates unlimited power to search for the truth.[26] Canonical criminal law was from its beginning greatly influenced by Roman practice,[27] and that influence appears to have affected its doctrine on this particular point of the obligation to answer—of the obligation to answer in secular courts at least. Roman law and Canon law flowered again together in the twelfth and thirteenth centuries: so close was the connection that "lex" or "leges" simply meant Roman law for the canonical and other writers of the time. The Decretists and earlier Decretalists taught unanimously that in ecclesiastical matters judgment could be passed equally according to Roman or to Canon law, provided of course that Canon law was not infringed. From Huguccio in the twelfth century to Hostiensis ("iuris utriusque monarcha," "famosus inter omnes") a hundred years later, most canonists held emphatically that all civilized nations were bound to follow Roman law. Huguccio expressly included the French and the English and other "ultramontanes;" they were all bound by Roman law, because they were subject to, or ought to be subject to, the Roman Empire. He was not sure about the Saracens. Hostiensis was even more forceful: the "most sacred" Roman laws should be known by all, and fully observed in all matters which were not against God; "for the Emperor is the lord of the world, and all are bound to be his subjects, Romans, French, Germans . . . and all the rest." Hence, concludes Van Hove, "one can understand why the canonists invoke texts

of Canon law and Roman law indifferently to support their teaching and to clear up doubts."[28]

The early Church had had something of an inquisitorial procedure in its criminal trials,[29] though till the end of the twelfth century its system, following the Roman model, was predominantly accusatorial.[30] It was an accusatorial system, however, which like the Roman allowed the judge to press for the truth: the accused had no right of silence.[31] This Roman spirit and this investigatory tradition, coupled with Germanic procedural forms, gave the Church the pure inquisition as its method of trial at the hands of Innocent III in 1199.[32] This method rapidly supplanted the accusatorial, cumbersome and slow as this then was; and because of its efficiency spread from the ecclesiastical to the secular courts of all countries except England.

(iii) Theologians from the Renaissance on moved uneasily. There was a natural reluctance to differ from St. Thomas, but the opinion grew stronger that an accused man was not obliged in conscience to admit his guilt, even when lawfully questioned, if answering truly would involve heavy punishment: in particular, death, life imprisonment, confiscation of goods. By the end of the seventeenth century this excusing opinion could list a great many followers;[33] St. Alphonsus considered it probable, even intrinsically, though he judged the other opinion more probable.[34] In the nineteenth century there were few who held the severer opinion, though the change of moral climate seems due not so much to the intrinsic nature of the matter as to the general reaction against absolutism after the French Revolution, a reaction that led the secular powers too to alter their laws empowering extortion of confession. Most if not all of those who favoured the milder opinion admitted the obligation to answer if the penalty was light or transitory (and hence held an obligation to answer in Church courts, where the penalties, though perhaps heavy, were medicinal and not permanent). The main argument was that natural law could not enable the State to impose in conscience a precept involving such grave harm.[35]

(iv) Until the end of the eighteenth century, and in some cases until later, inquisition was the usual method of trial in Church courts and in the secular courts of western Europe, England excepted. During the last century accusation has been generally restored, in varying degrees. In Canon law it has held

principal place since 1880,[36] though still today in Canon law and in Continental law in general the process is not purely accusatorial, but is a mixture of inquisition and accusation. Correspondingly, during approximately these same divisons of time the Church and Continental countries in their criminal procedures have varied their demands on the suspect. All during the time of the full inquisition they did empower the judge to ask the suspect about his guilt and obliged the suspect to reply. In secular courts and sometimes in ecclesiastical ones too he was compelled to answer by physical torture, and certainly in both courts by the compulsorily administered oath *de veritate dicenda.* St. Thomas did not discuss the use of torture, but almost from his time for over five hundred years there is scarcely a theologian to be found who did not proclaim the lawfulness of its use to extract confessions under certain carefully determined conditions.[37] Those who argued for one side or the other the question whether the defendant was bound in conscience to confess his guilt when lawfully questioned agreed about the lawfulness of torture. In 1725 the Church forbade the administering of the oath to the suspect, though the power of the judge to question remained, and the obligation to answer. During the nineteenth century the countries of Europe one by one lifted from the defendant that obligation to reply. It was not until the Code of Canon Law in 1918 that this obligation was removed for ecclesiastical trials.[38] What is principally to be noted from this perhaps overlong historical exposition is firstly this, that the Roman-canonical-Continental tradition has since the end of the Roman Republic unvaryingly allowed the judge to question the suspect or accused. This is still the position today, in most if not all of the countries of Europe; and is apparently still the position in Canon law, though the duty to reply has been lifted.[39] Secondly, that a solidly probable opinion excuses a guilty person from confessing a serious crime, even if the law of his society lays on him the obligation to reply.

THE CONTINENTAL SYSTEM TODAY.

The word "inquisition" has of course a sinister ring, but there is nothing unjust in the procedure rightly carried out, neither in the purely inquisitorial method nor in the mixture of inquisition and accusation that is found in Church and Continental courts today. It can provide benefits for the suspect that our method does not so easily secure for him.[40] A brief

sketch of modern Continental procedure, based mainly on that of West Germany, will serve to illustrate the point about which the moralists already quoted were writing. If the preliminary police enquiries disclose evidence pointing to someone as the probable culprit, he may be then (according to conditions which vary from country to country) summoned for interrogation before an examining magistrate;[41] if necessary, he may be arrested and held in custody during this time. The interrogation is conducted in secret; not even his legal representative may be present.[42] Strict safeguards are provided against injustice. He cannot be forced to answer, but may be warned that if he does not answer, or answers untruly, this may count against him by way of more severe penalty if he is subsequently convicted.[43] If the investigation shows that there is no good case against him, he is discharged; if a case is shown, he is sent for trial to a proper court. In some cases he is charged directly before the trial court, without the preliminary investigation. In this court the trial proper begins with the questioning of the accused by the court, before the other witnesses are heard. This is also the procedure in the modern accusatorial trial under Canon Law. There could be no greater contrast with our system than this, for with us all the evidence for the prosecution is heard first, and even then the accused cannot be questioned unless he agrees to give evidence. Here again in the German system he is not compelled to answer the questions, but he may be warned of what may follow if he fails to answer truly; he may be warned apparently too that silence may lead to an inference of his guilt.[44] The questioning before the first official is part of the preparation of the possible evidence against him; and the questioning at the trial is part of the case against him as well as for him. It is the tradition and practice of a thousand years and more, the age-old right and duty of the judge to seek the facts and to that end to question all who may know them:[45] it is not of course a bias against the defendant, but an impersonal search for the truth, no matter whom that truth may favour or harm. From the point of view of the guilty defendant, though, evidence is being collected against him, if possible from his own mouth; yet no obligation in conscience is being laid upon him by the State to incriminate himself. As we have seen in (iii) above, even if the State were today attempting to put such an obligation on him, the theological opinion excusing him where an admission of guilt would involve serious punish-

ment is solidly probable, to say the least.[46] Hence in practice he is not obliged to confess the truth when interrogated in this way.

The procedure is, as Vermeersch said, a "warfare." The court seeks the truth, and so logically begins by asking the person most likely to know it, the suspect or defendant. He in his turn is not bound to contribute to the evidence against himself. Silence, or if that will not do, other means, including broad mental restriction, may be used to force the court to find elsewhere the evidence to convict him. Hence we can understand the full significance of the words of Aertnys-Damen and others, that in criminal cases in modern secular law the judge questions the defendant only "to obtain replies from him as weapons, so that the defendant may be convicted in this way and led to the confession of his crime."[47]

THE ENGLISH-AUSTRALIAN SYSTEM.

Continental law, both civil and criminal, both substantive law and procedure, is broadly speaking a descendant of Roman law and Canon law. Our system is a native English growth, very different in all branches from the other.

In English law the procedure is at all stages purely accusatorial. After investigation by the police, the suspect in a serious matter is charged before a magistrate or justices. All the evidence for the prosecution is given, with full opportunity to the accused to cross-examine, before there is any question of his giving his own account of the matter. If this prosecution-evidence discloses a case to answer, he may make his defence there and then or he may follow the far more common course and reserve his defence for the higher court. Whichever he does, he will be committed to that higher court for trial before judge and jury. There, after his plea of Not Guilty, all the evidence for the prosecution is offered once more, and again he has full faculty to cross-examine. If the evidence against him shows that there is no case to answer, or that a conviction would be unsafe, the charge against him fails of its own accord and there is no need for any defence against it. Usually there is a case to answer. This does not mean that the jury must find him guilty if he makes no defence, but that they must consider that case as shown by the evidence. Whether or not

he makes a defence, he may not be convicted unless the evidence shows him guilty beyond reasonable doubt.

At the close of the case for the prosecution, unless the unusual ruling is given by the judge of no case to answer, the accused has as the law stands today a choice of three things: (1) silence; (2) making an unsworn statement; (3) giving evidence on oath. This last has been permitted to him only since 1898 in England, and since later dates in the Australian States.[48] Only in this last case of his choosing to make a sworn defence, or its equivalent the solemn declaration, can he be questioned by either the prosecuting counsel or the judge.

Throughout the whole procedure, from preliminary investigation by the police to committal proceedings before the magistrate and through the trial by judge and jury, his right to silence is inviolable. He cannot even be questioned, unless he chooses to make a sworn defence. If he makes an unsworn statement, as many do, no questions can be asked.

In England prosecuting counsel may not comment to the jury on the accused's choice, and hence may not remark on the significance of the accused's not taking the oath and so avoiding questioning. The judge, however, may make such a comment.[49] In the Australian States the only relevant difference concerns the last point. South Australia's law is the same as England's.[50] So is that of Tasmania,[51] Western Australia,[52] and apparently Queensland.[53] I understand that in Western Australia some doubt is felt whether the accused may properly make an unsworn statement, but judges have permitted it over a period of years without objection from counsel for the Crown. In Queensland the judge usually specifically instructs the jury that they are not to draw any adverse inference from the accused's failure to give evidence (whereas in the other States mentioned, as in England, the judge feels free to comment adversely); it is usual in Queensland, however, for both judge and Crown counsel to mention that the statements are not on oath and are not subject to cross-examination. Victorian law has the slight variation that the judge may not comment on failure to give evidence on oath and so submit to cross-examination unless the accused has elected to make a statement not on oath.[54] New South Wales alone prohibits the judge absolutely from making any comment.[55]

CONCLUSION.

The conclusion is, therefore, that in our system the guilty accused may plead Not Guilty, may use all lawful means to test the prosecution's case, may, in short, require the case to be proved against him beyond reasonable doubt, and may keep silent. He may not make an untrue statement, whether sworn or unsworn. No right of his is being attacked. Nothing is being done to force him to betray himself. It is correct that the evidence against him puts him in a difficult position; but there is no Catholic doctrine that being in a difficult position justifies false statements to escape it. It is further correct that the silence of the accused, the lack of an explanation, is likely to be taken by the jury to mean what in fact it does mean, that he is guilty. But the same doctrine remains true: one may not lie to escape trouble. The false statement is a lie, unless the circumstances show or the fact is that there is no duty to tell the truth. That will only be so if some right of his is being impugned, and in this case there is no attack on any right. He has no right not to have true evidence presented against him: he does have a right not to be made reveal his own guilt, and that right remains untouched all through in our criminal trials. No-one can force him to speak, nor question him unless he wishes. He does not make his defence until the case against him has been completely presented, and he is under no pressure that he ought not be under when he comes to make that defence. There is no foundation at all on which broad mental restriction can rest.

The Continental questioning, on the other hand, is an attempt to make the defendant contribute to the case against himself, a case not at this stage complete. He has, at least in modern practice, and with a strong probability absolutely, a right not to be forced to contribute to his own condemnation. He may therefore defend himself against the questioning.

Some final points remain to be examined in our English-Australian system. Firstly, does the fact that in some places the judge can comment to the jury on the accused's failure to speak, or on his failure to give evidence on oath and so expose himself to questioning, affect the position set out above? The answer must be that it makes no difference. That is easy to see with regard to the first point (failure to speak), because the judge is merely pointing out to the jury what they could observe for

themselves and rightly take into consideration. But neither does the judge's power to comment on the failure to submit to questioning make any difference. For *at this stage* no right is being infringed: there is a lawful comment that the accused is not using a defence open to him, in his position of danger from true evidence; a defence, though, that the accused is not morally entitled to use if he is guilty. If he does choose to take the oath, he may speak falsely neither in his evidence-in-chief, nor in cross-examination; whether the judge can comment or not, the accused has no right to do more than deny the charge. Secondly, it appears to me, though the point is not essential, that the only "conventional" locution is the accused's original, "Not Guilty;" and that any further denial, even a repetition of that later in the trial, contains an implicit asseveration that he is speaking the truth. At the most, however, he is allowed to repeat, "I am not guilty," or deny the indictment as it stands.

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[1]Some require a grave cause in this case, if perjury is to be avoided when using mental restriction. Most, however, accept the position as I have put it. For a brief but clear statement, see E. J. Mahoney, "Priests' Problems" (1958): n. 335, ii; Aertnys-Damen, "Theologia Moralis," 13th ed., 1939, I, n. 1000.

[2]Génicot-Salsmans-Gortebecke, "Institutiones Theologiae Moralis," 17th ed.: I, n. 693: "Reo (scil. accusato qui se in quavis causa poenali defendit) licet semper crimen a se admissum negare. Nam haec negatio, ex adjunctis, non est nisi locutio conventionalis, qua declarat se non convictum esse criminis quod ipsi obicitur, — neque aliter dicendum *de explicationibus* a reo confictis ad innocentiam suam probandam: nemo enim iis fidere potest, nisi quatenus circumstantiae allegatae aliunde constant."

[3]"Lack of competence": that is, in the technical sense of the judge's being invalidly appointed or his exceeding his power.

[4]Vermeersch, "Theologiae Moralis Principia . . ." etc., 3rd ed. (1937): II, n. 646: "Si autem reus delictum dissimulare potest, nec pro mendacibus habenda erunt verba quibus ad dissimulandum utitur. Namque ex ipsis adiunctis non serio prolata esse apparent. Ubi autem, sive ex defectu competentiae sive ex violata lege, legitima interrogatio desideretur, artes istas multo magis licere manifestum est."

[5]Vermeersch, op. cit., n. 654: "Si *adiuncta* formalem verborum significationem auferant; ut si iocose dicas aperte falsa, vel mere utaris formulis urbanitatis, solacii (pro aegrotis), vel in nostro foro saeculari, reatum neges aut "systema" defensionis excogitatum narres: reus non censetur, in ista artificiosa defensione, mentem suam per verba quae profert exercite aperire, sed quasi bellico strategemate uti."

[6]e.g. Aertnys-Damen, "Theologia Moralis," 13th ed., 1939, I, n. 1242: "In specie in iure civili hodierno in causa criminali iudices reum

tantum interrogant ut responsa pugnantia ab eo eliciant, et hac ratione reus convincatur atque in criminis confessionem adducatur;" Ubach, "Theologia Moralis," 2nd ed., 1935, I, n. 1367: "Iuxta praescripta iurium modernorum pro processibus criminalibus, iudices reum interrogant tantum ut ab eo responsa pugnantia obtineant, et hac ratione ipsum convincant atque ad crimen fatendum adducant" (Ubach expressly approves Génicot's words quoted in Footnote 2); Noldin, "Summa Theologiae Moralis," 21st ed., 1932, II, n. 732: ". . . ex iure civili moderno . . . iudex reum solum ita conatur interrogare, ut responsa pugnantia eliciat et hac ratione reus convincatur atque ad criminis confessionem adducatur." Someone has been copying.

[7]". . . cum quaestio sit in qua dissolvenda etiam doctissimi fatigantur" ("Contra Mendacium," n. 33): "Verum hic difficillima et latebrosissima gignitur quaestio . . . utrum ad officium hominis iusti pertineat aliquando mentiri" ("Enchiridion," c. 18).

[8]Cf. e.g. the historical accounts given by Vermeersch in articles in "Gregorianum," I, p. 11 and 425; and the quotations from mediaeval canonists in Stephan Kuttner, "Kanonistische Schuldlehre" (1935), p. 287 sq.

[9]e.g.: A. Dorszynski, "Catholic Teaching about the Morality of Falsehood" (1948): Vermeersch, in "Gregorianum," I, p. 11 and 425, in his "Theologiae Moralis Principia" and elsewhere; M. Ledrus, in a series of articles in "Periodica" (1943) p. 5, 123; (1944), p. 5; (1945) p. 157; and other citations in M. Zalba, "Theologiae Moralis Summa," II (1957), n. 1643. It seems too good to be true that a book has appeared in German covering Lying in all its aspects, with the attractive title of, "Die Luege, in psychologischer, philosophischer, juristicher, paedagogischer, historischer, soziologischer, sprach- und literaturwissenschaftlicher, und entwicklungsgeschichtlicher Betrachtung" (1927). This was not available to me, perhaps unfortunately, but is cited in Vermeersch, "Theologiae Moralis Principia," II, p. 633.

[10]Cf. Also M. Ledrus, "Periodica" (1943), p. 152 sq.

[11]Cf. Huerth-Abellan, "De Praeceptis," Pars II (1948), n. 505: "'Verum' hoc loco intelligitur id quod est *conforme verbo mentis in loquente*, seu quod qui loquitur suis verbis exprimere vult; non intelligitur: quod qui audit scire desiderat et sibi manifestare opinatur." That this, however, is not the meaning of "verum" for many members of Group One seems clear from their demanding always an ambiguity from facts or circumstances. Italics are the authors'.

[12]I have necessarily at times to adopt a terminology which not all would accept. I am endeavouring to speak of a broadly common fundamental idea, which is naturally clothed with different words in its different explanations and applications.

[13]Vermeersch, "Theologiae Moralis Principia," II, n. 654.3; and in "Gregorianum," I, p. 467.

[14]M. Ledrus, "Periodica" (1944), esp. at p. 55-56.

[15]Jorio, whose words follow fairly well the ordinary doctrine of Group One, adds a note at the end: "Theologia Moralis," 6th ed., II (1939), n. 295: "Cum liceitas restrictionis mentalis *late* dictae repetatur ex necessitate, quae *medium licite celandi secretum* poposcit, ut dicitur supra, non immerito aliqui auctores, praesertim *moderniores*, censent veram et intrinsecam rationem mendacii inesse praecise locutioni contra mentem cum voluntate falsum *formaliter* dicendi, scilicet cum *iniuria* audientis, interrogantis, vel tertii. . . . Unde aptius et sincerius diceretur, minime mentiri eum qui, ad seipsum iuste defendendum, veritatem occultet contra importune interrogantes, qui ad secretum sciendum hic et nunc *ius non habent.*" Italics are the author's. The *moderniores* whom he names are Génicot and Vermeersch. He therefore agrees

that it would be better to cease demanding equivocal speech, giving the true meaning, since the prompt finding of it will depend on the sagacity or education of the speaker: it is important that this defensive means should be available to all, including the dull and unlearned. For a brief recent comment, see Joseph J. Farraher, "Theological Studies" (1960), p. 608-609.

[16]Génicot, op. cit., I, n. 414: "Quacumque ratione res explicetur, istud in dubium vocari nequit: oportere ut praesto sit omnibus, non tantum doctis, sed et rudibus, *practicum medium quo secreta sua tueri queant* ab importuno investigatore. Quare, ubi constat adesse necessitatem tuendi secreti, non est scrupulose procedendum, sed sine haesitatione eligi potest simplex respondendi ratio quae ad secretum servandum necessaria videatur, quamvis forsan non distincte cernatur quomodo e verbis ipsis vel ex adiunctis verus sensus locutioni subsit."

[17]Merkelbach, "Summa Theologiae Moralis," 10th ed., II (1956), n. 862. 3 and 4.

[18]We are speaking, of course, only of offences against *veracity*. It is true that *charity* may be offended if broad mental restriction is used without proportionate reason even in those cases where it can be used without lying.

[19]Cf. Génicot, n. 416: ". . . restrictio mentalis peccaminosa est et mendacio aequiparatur, si *absque iusta causa* adhibetur." Italics are Génicot's.

[20]e.g. Génicot in Footnote 2 above: "Nemo enim iis fidere potest;" and in n. 414: "Late mentalis . . . si verba de se clara . . . prolata videntur tanquam non litteraliter significativa." This last phrase can have a correct sense, and the author undoubtedly means this; but left by itself absolutely (as it is in the author), it is easily joined by the reader with the "iusta causa," "vera utilitas," "verum incommodum," etc., allowed by the writers as justifying its use; and so can follow the utterly false conclusion that "utility" will permit false speech when "no one would prudently trust it," and so on. Cf. likewise Aertnys-Damen, "Theologia Moralis," I (1939), 13th ed., n. 997: "Restrictio . . . non pure mentalis . . . quae ex adiunctis innotescere potest confuse saltem, i.e., cum auditor arguere potest quod loquens intelligat intus aliud, quam propositio ex se significat."

[21]Génicot especially makes it clear from his whole context that when talking of non-conventional unambiguous speech he has in mind replies to interrogations only. Vermeersch, in "Gregorianum," I, p. 470-472, refers to licit false spontaneous speech, but allows it only where the circumstances disclose its ambiguity. We are here discussing speech that can have but one meaning.

[22]To be exact, it is not an urgent speculative question today in law-courts. But it is very much one in such procedures as those of the Congressional Investigating Committees in the United States, and can be in our own Royal Commissions of Enquiry.

[23]S.Th., II-II, q. 69, a. 1.

[24]e.g. Pruemmer, "Manuale Theologiae Moralis," 12th ed., II (1955), n. 163. Some others agree; most today would avoid the question, because it is no longer practically necessary to answer it.

[25]Cf. Jorio, op. cit., II, n. 1059: "*Et principiis iuris romani* videtur fulciri S. Thom., qui in 2-2, q. 69, a.1, absque ulla exceptione *affirmat* reum teneri iudici veritatem exponere, quam ab eo *secundum ordinem iuris exigit.*" The italics are Jorio's.

[26]Mommsen, "Roemisches Strafrecht," 1899 (unaltered reprint, Berlin, 1955): Criminal procedure in the Empire was "legalised formlessness" (p. 340); "cross-examination of the accused took first place

among the methods of proof" (p. 404); there was no limit to the power of the magistrate, and no question that could not be put. See also: Strachan-Davidson, "Problems of the Roman Criminal Law," 1912: vol. II, p. 165; Pauly-Wissowa, "Real-Encyclopaedie der classischen Altertumswissenschaft," I, col. 152, and IV, col. 218. Constantine crystallized the rule: "Iudicantem oportet cuncta rimari et ordinem rerum plena inquisitione discutere, interrogandi ac proponendi adiciendique patientia adhibita ab eo." (Codex Theodosianus, 2, 18, 1.)

[27]Influenced by its accusatorial procedure, and its legal spirit. For the influence of Roman criminal procedure on canonical, see: Zeiger, "Historia Iuris Canonici" (1947), II, p. 75: "Iuris canonici instituta, quae inter saeculum 4-7 creata sunt, aut instituta juris romani omnino imitata aut saltem quadentenus eius spiritu sunt imbuta;" see also Wernz-Vidal, "Ius Canonicum," VI, 2nd ed., 1949, p. 682; Maassen, "Geschichte der Quellen und der Literatur des canonischen Rechtes im Abendlande," 1870 (unaltered reprint, 1956), p. 309, 628, 726; Ploechl, "Geschichte des Kirchenrechts," I, 1953: p. 88 sq., 221 sq. One should note that even the Roman accusation-process, as well as the inquisitorial, allowed the judge to question. See in general Gaudemet, "L'Eglise dans l'Empire romain (IV-V siècles)," 1958: p. 258, esp. at p. 264 sq., noting: "Si la procédure reste accusatoire par sa mise en oeuvre, elle prend au cours du procès un caractère inquisitorial, qui ira sans cesse croissant"—p. 265.

[28]Van Hove, "Commentarium Lovaniense in Codicem Iuris Canonici: Prolegomena," 2nd ed., 1945: p. 461-465; Gratian's *dictum* in c. 4, C. XV, q. 3, and his similar statements in D.X., c. 1 and 6.

[29]Besides the citations already given, see Gratian's quoting of the Pseudo-Isidorean decretal in c. 11, C. XXX, q. 5—a decretal whose wording is taken from Constantine's law cited above in Footnote 26. This decretal is also given in the collections of Burchard and Ivo of Chartres.

[30]In "accusation" the judge is mainly or wholly passive: he waits for evidence to be put before him by the accuser. In "inquisition" he is active: he not merely awaits evidence, he seeks it. Clearly there can be degrees, in which the two are mixed. It would also be possible for a court to be inquisitional in general but not have power to question a person charged with the crime under investigation; or be otherwise accusatorial yet have that power to question him.

[31]See the citations given in Footnotes 27 and 29.

[32]See decretals cited in c. un. X, III, 12; c. 10, X, V, 34; c. 31, X, V, 3; c. 17, X, V, 1; see also Wernz-Vidal, p. 683; and Saegmueller, "Lehrbuch des katholischen Kirchenrechts," 2nd ed., 1914, II: p. 331-332.

[33]Lugo, "Tractatus de Iustitia et Iure," Disp. XL, Sect. I, n. 14: "Sed certe ex recentioribus tot iam eam probabilem dicunt, ut ii, demptis etiam antiquioribus, sufficerent;" see also Ferraris, "Prompta Bibliotheca," under the word "Accusatus."

[34]St. Alphonsus, Tom. II, 1. IV, c. III, dub. 7, a.i.

[35]Lugo's arguments are almost always cited by later writers. See Lugo, loc. cit., n. 14, 15.

[36]Instruction of S.C. of Bishops and Regulars, 11th June, 1880 (text in *Fontes Codicis Iuris Canonici*, n. 2005).

[37]Reiffenstuel is most indignant at a few who queried the common teaching that torture could lawfully be used: "Their singular opinion should be entirely ignored, contrary as it is to every authority ancient and modern, and to the whole flood of doctors; and the use of torture, rightly retained for the common and public good, is entirely approved and praised." ("De Regulis Iuris," in Reg. 6 ex Regulis in V, n. 3; elsewhere, in his treatise "De Processu Criminali Regularium," in V, i, 472 sq., he has a spirited and enthralling serial description of the flogging of a friar by two lay-brothers to make him confess the

theft of a chalice and violent escape from custody, while the Provincial stood by, counting the strokes on his Rosary beads.) Some modern authors still hold, or have held, that torture used under the right conditions to extract confessions is not against the law of nature. Its use for this was condemned by Pius XII in 1953 and again in 1954: Address to Sixth International Convention of Penal Law on October 3, 1953 (A.A.S., 1953, at p. 735-736); and Address on October 15, 1954, to Twenty-Third Council of the International Police Commission (A.A.S., 1954, p. 598). Torture was a Roman law contribution to Canon Law, beginning in the thirteenth century.

[38]Canon 1743 §1: "Iudici legitime interroganti partes respondere tenentur et fateri veritatem, nisi agatur de delicto ab ipsis commisso."

[39]See Clune, "The Judicial Interrogation of the Parties" (Catholic University of America study), 1948, p. 114, 121. The accused may be questioned about his alleged crime; but is not bound to answer, nor can his refusal to do so be in any way construed as an admission of guilt.

[40]It is interesting to note that Professor Glanville Williams, of Cambridge, in a recent book, "Proof of Guilt—A Study of the English Criminal Trial," 2nd ed., 1958, thinks that the English court could learn from the Continental and should have power to question the accused, without being able to force him to answer. This power would be for the public good, for only the guilty would be harmed by it (he does not take into account the right not to be compelled to disclose one's guilt); and for the good of the innocent accused, who if unlearned and unrepresented by counsel will often not be able to put his defence properly if left unaided.

[41]The examining magistrate in France is the *Juge d'Instruction,* in Germany the *Untersuchungsrichter.* The criminal procedure of the Federal Republic of Germany is contained in the *Strafprozessordnung,* officially abbreviated to *StPO.*

[42]*StPO* 192. II.

[43]*StPO* 136, and commentary thereon.

[44]*StPO* 243. III, and 136, with commentary thereon: "Doch kann ihm der Richter die Verdachtsgruende vorhalten mit dem Hinweis, dass seine Aussageverweigerung ihm Nachteile bringen koenne. . . . Es kann daraus sogar seine Schuld gefolgert werden." (Dr. Otto Schwarz in "Beck'sche Kurz-Kommentare," 1954). Recent legislation has been proposed to improve the German procedure, but as I understand it, it will not affect these matters.

[45]In addition to the historical discussion given above, cf. Dr. Schwarz's Commentary, p. 9, on the Continental concept of the function of a criminal court: "Within the limits of the accusation it is entitled and obliged to seek the material truth *by its independent activity.*" Italics are the author's and also mine.

[46]See Footnotes 33-35.

[47]See Footnote 6.

[48]"Criminal Evidence Act, 1898" (United Kingdom), Sec. 1. This Act has been substantially copied in each of the Australian States; and also, I understand, in most of the United States. In Georgia alone the accused is not permitted to give evidence on oath.

[49]Cf. Archbold, "Practice, Evidence and Pleading in Criminal Cases," 32nd ed., London, 1949: p. 468.

[50]"Evidence Act, 1929-1957" (South Australia), Sec. 18.

[51]"Evidence Act, 1920" (Tasmania), Sec. 85.

[52]"Evidence Act, 1906" (Western Australia), Sec. 8.

[53]"Criminal Code" (Queensland), Sec. 619.

[54]"Crimes Act, 1958" (Victoria), Sec. 398-399.

[55]"Crimes Act, 1900" (New South Wales), Sec. 407.

Grace and Divine Persons

1. Indwelling: PERSONAL PRESENCE.

We have seen that for fuller Christian living it is most important to regard grace not chiefly as an effect which God produces in us, but as a power to live in personal contact, by knowledge and love, with the Three Persons of the Blessed Trinity.[1] In recent years much has been written on the divine Indwelling.[2] In this article I shall attempt to show that the most meaningful way to explain this mystery of our faith is in terms of personal presence. In more speculative articles, some theologians have tried to make full use of Father De la Taille's theory of created actuation by Uncreated Act.[3] We can have nothing but praise for these scholarly attempts to deepen our understanding of the mystery. However, I would agree with another theologian who writes:

"Every explanation of this revealed truth will remain inadequate—the mystery is too deep to understand. Conscious of the fact that here it is a question of an ineffable divine communication, some theologians have been forced to have recourse to a 'quasi-formal' causality, to a special 'created actuation by Uncreated Act.' However, there is evidently a radical insufficiency in any attempted explanation worked out exclusively in these categories, which could be applied equally to a non-personal communication, and which leave out the characteristic aspect of personal self-giving'."[4]

All explanations of the mystery must remain inadequate. To my mind, the most theologically satisfying view of the mystery is the one which is, at the same time, the easiest to grasp, and most helpful for the spiritual life: the personal explanation. This has a double element. The first is that grace is directed towards our being present to God by a personal meeting with Him (the

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[1]"Grace and Person." A.C.R. 38 (1961), April.

[2]For a fairly comprehensive bibliography up to 1956, cf. Theology Digest IV (1956), p. 83ff.

[3]Chief among them is Fr. de Letter, mainly in Theological Studies in 1952 and following years.

[4]Alfaro, S.J. "Persona y Gracia," Gregorianum, XLI (1960), p. 13.

presence of our personal meeting with God). "God is present in the soul not only as efficient Cause, producing faith and love, but also objectively after the manner of a friend with whom it converses and whom it keeps with it. . . . The movement of the creature, says St. Thomas, 'does not stop at the gift received from God, but tends onwards, to Him who gave the gifts' (I Sent. d. 14, q. 2, art. 1). All the supernatural spontaneity which it receives from the Trinity acting in it as a unique efficient cause, the holy soul uses, even on earth, to raise itself up to the meeting with this supreme object, ineffable, possessed in mysterious intimacy, which is the three divine Persons. For the presence of efficiency results from the divine essence common to the three divine Persons, but the presence of meeting is with the three Persons as distinct. The whole Trinity is thus present in a new objective manner to the soul who lives in charity."[5]

In this passage, Father Journet nearly gets to a meaningful explanation of the personal presence of God indwelling; nearly but not quite. A few modifications can give a richer and more satisfying way of viewing this great reality. God abides in us and we abide in God. Our presence to God, our abiding in Him, is evidently, as St. Thomas insisted, by way of knowledge and love—for this is the way that persons are present to one another. Such presence is not merely a matter of physical nearness,[6] but of union in knowledge and love. We have an expression: "He's not with us" which we apply to someone physically present, when in thought, or will, he is separated from us. Personal presence is through union of mind and will. God is pure spirit, and any special presence to Him of intellectual creatures must be by way of knowledge and love. But, when we think of the divine indwelling, it seems evident that our knowledge and love of God are not the whole of it. The active exercise of our knowing and loving would seem to be towards God who is already present. Many theologians[7] say that God, who is always present in us by the presence of immensity, is not really present to us personally until we know and love him by faith. To my mind, this is not sufficient. Christ, speaking of this special presence, says: "We

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[5]C. Journet. "L'Eglise du Verbe Incarné," 2, Fribourg, 1951, p. 511f.

[6]Cf. B. Lonergan, S.J., "Personarum Divinarum," P.U.G., Rome, 1957, p. 229ff.

[7]Well known names are v.g. Garrigou-Lagrange, Gardeil, etc.

will come to him and make our continual abode with him,"[8] in which, clearly, he implies a special coming; and, in a later passage, a special sending of the Holy Spirit. The obvious meaning of Our Lord's words does not seem merely a matter of efficient causality nor of presence by immensity.

Explained in terms of personal reality, the Indwelling takes on a meaning—theological and intelligible to all—which it does not have if God is thought of as being present as efficient cause, even of supernatural gifts. We do not, in this sense, have devotion to a Cause. Here we can profitably modify Father Journet's view, given above. As he stresses, and as St. Thomas insisted, the created reality was caused in us precisely in order that we might freely tend to a meeting with the Three divine Persons in a mysterious intimacy of loving friendship. However, it must be remembered that friendship is a *mutual* meeting in love and knowledge, a *mutual* giving and receiving. Towards friendship with God, we can not take the first step: "He has first loved us."[9] If we keep this in mind, we can see how created grace is more than our ability to know and love God present in us, as in all creatures, by a presence of immensity; or even as present in us as cause of special, supernatural effects.

Created grace is the effect of God's personal approach to men, of that special coming to us of which Our Lord spoke. God can gives us grace only if he looks on us with a new special knowledge and love: only if he makes a new personal approach to us, becoming present to us in a new personal way. Strictly speaking, of course, the newness can involve no change in God. But it is true to say that God comes to us in a new and special knowledge and love, if there are new effects produced in us.
"The knowledge of God is the cause of things."
"The love of God creates and infuses goodness into things."[10]

Thus it is true that God's creation and infusion of supernatural realities into the human soul is the result or term of God's special knowledge and love. When those realities are directed to our living in personal friendship with God, God's giving them is clearly his coming to us, making himself present

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[8]Jo. 14, 23.

[9]I. Jo. 4, 10.

[10]Summa Theologica, I, q. 14, art. 8; I. q. 20, art. 2.

to us in a personal approach. Here we can see how vital was the necessity of insisting (against the Reformers) that justification must necessarily involve the internal renewal of man's soul. For to say that God looks on us with a special knowledge and love must mean (if it is to have any meaning) that there is a new created effect of God's knowledge and love.[11] But perhaps now it is more necessary to insist that the creation of grace makes it really true to say that in justification God becomes present to us, by coming to us in a personal approach; with a special personal knowledge and love.

For the full concept of meeting with God in friendship, or Indwelling as a mutual personal presence of God and man, a two-fold step is involved (a pari with any personal friendship):

(a) God must first make himself present as a friend in personal approach to us;

(b) Then this personal approach is recognised and accepted: the active knowledge and love of the man who accepts God's friendship and lives in his presence. In the beatific vision this living in God's presence will be continually in act. On earth it is not so; but it is still a true dwelling together, for friendship is an atmosphere in which we live. And if we are not always consciously living with God, He is always with us as Father and friend.

Scripture speaks of God being present in us as in a temple. This obviously conveys two ideas which fit in well with what we have just said:

(a) God personally, permanently present—waiting to be the object of man's worship and attentive love. This permanent personal presence is by the infusing of grace which, of its very nature, is an invitation to turn in loving adoration to the God who has come to dwell in us.

(b) The homage of man, which in this life can not be uninterrupted, but is given in proportion to the fervour of soul, and as necessary occupations allow.

The "personal presence" of God in us will be more perfect as we grow in knowledge and love of him, exercising that knowledge and love more continually. Still, since "God has first loved us,"

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[11]Ib. I, q. 43, a. 3, ad. 2.

and since his special love causes and infuses grace and virtues into us, the three divine Persons are personally present to us as long as we are in the state of grace.

2. Children of the FATHER.

In recent theological articles much discussion has centred around the question of whether, because of grace and the divine Indwelling, we have special ontological relations to the three divine persons as distinct, or one relation only to God as one in essence. If you regard God as being present as efficient cause, there is, against special relations, an obvious difficulty arising from the fact that created effects come from the Trinity acting as one principle.[12] One writer even suggests a relation which "is absolutely one, and virtually three" ultimately founded on quasi-formal causality. One argument advanced in favour of this was: "the practical consequence: . . . a devotional life more genuine and sincere. . . ." I do not think that many will find their devotional life helped or hindered by the virtualities of their ontological relationships.

St. Thomas wrote that grace gives us the power of delighting in the three divine Persons.[13] These persons are really present in the just soul in their personal reality. Ontological relationships do not necessarily dictate the quality of 'personal' relationships. For example, according to St. Thomas, my relation of filiation to my parents is ontologically one, since it is as one principle that they beget me. But my father and mother are two individual, distinct persons. If my mother is a delightful person, and my father a self-centred, inconsiderate scoundrel, my relationship of personal knowledge and love will be dictated by their personal qualities, and not by my ontological relationship.

While the theological discussions continue, we may continue to use the grace which is ours: our power of enjoying and delighting in the three distinct persons who come to us and make their abode with us. The Father, as Christ taught us, we shall approach as our Father, too.[14] Our divine sonship we will look upon as a sharing in the sonship of Christ "the firstborn of many brethren,"[15] into whom we are incorporated at Baptism. The

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[12]Pius XII. "Mystici Corporis." A.A.S. 35 (1943), p. 321.

[13]Summa Theologica, I, q. 43, art. 3; art. 4, ad 1; art. 5, ad 2.

[14]Jo. 20, 17: "I am going up to him who is *my* Father and *your* Father."

[15]Rom. 8, 29.

Spirit we shall regard as the Personal Love of God who is given to us, making it possible for us to be united to Father and Son in personal love. "If uncreated grace is but the personal self-giving of God to us . . . if in God there is no other personal being than Father, Son and Holy Spirit, there is no other possible personal self-giving of God than the giving of the Divine Persons."[16]

At least since the days of Leo XIII, most of us (unless we are Scotists) like to think that St. Thomas is not against us. In this particular question, St. Thomas is often quoted as saying that we are sons of the Trinity. However, in his writings, St. Thomas has two lines of thought which some say he did not synthesize perfectly. Father Mersch[17] sums up the two series of texts as:

(a) The juridical conception of divine adoption, regarded from the viewpoint of the act producing it. Since this is the realm of efficient causality, any role attributed to different persons is merely a matter of appropriation. The act of making us children of God is common to all three Persons.

(b) The theological or mystical conception of adoption which, regarding the Persons to whom we are personally united by grace, considers them as distinct.

Father Rondet sees these two currents as St. Thomas' inheritance from two distinct traditions:

(a) that of St. Augustine and the Latin fathers;

(b) that of the Greek fathers.

St. Thomas may have neglected to synthesize these two lines of thought. He may have thought they did not need to be synthesized. It remains true that our living the life of grace will be knowledge and love of the three Persons as they are in themselves. In the beatific vision we shall be united to them in their personal distinctness.[18] Our life of grace is the beginning of that same life of personal union. Our personal knowledge and love for each Person will be tinged with gratitude for the life which each has given us. But it is as Father that the Father, source of all divine life, gives us a share in that life; the Son gives us life as he possesses it—his personal life of sonship; the Spirit as the gift of personal love.

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[16]Alfaro, art. cit.

[17]"Theology of the Mystical Body," Herder, St. Louis, 1955, p. 353 ff. Rondet, S.J. "Gratia Christi," Beauchesne, Paris, 1948, p. 333 ff.

[18]Constitution, "Benedictus Deus," D.B. 530.

3. Sharing Christ's Sonship.

Christ, as man, was full of grace and truth, and of his fulness we have all received. Our grace is a sharing in his fulness of grace. Grace has the personal quality of making us sons of the Father: for this was the personal quality it had in Christ. Our grace is "gratia Christi" not only because it was merited by him, is given to us through his humanity as instrumental cause, but because it shapes us to the likeness of Christ. Grace in his human soul has a personal characteristic—that of sonship—which it should produce, in lesser measure, in our souls.

If we regard grace as the power of living a personal relationship with the divine Persons, it is not difficult to see the function of grace in the human soul of Christ. In Christ there was one Person, the divine Person of the Son. In his human nature, he could not have any personal relationships with the Father and Spirit other than those he possessed from all eternity. His whole personality was to be the only-begotten Son of the Father. He is a Person only insofar as he is the Son of God. Created grace was infused into his soul so that, in and through his human nature, he might live the only personal life he could have—that of the Son of God. The explanation of grace in the soul of Christ is as simple and sublime as that. This created grace was given him to make it possible for him to live, as man, a personal relationship with the other divine Persons. As the eternal Word, he possesses eternal, immutable relationships with the Father and Holy Spirit. Created grace is the lifting of his human faculties so that the Son of God can live through them his personal life of divine Sonship. It would not be possible for the one Divine Person to have personal relationships with Father and Spirit other than those which he has from all eternity. If grace is given his humanity, it must be a grace of sonship. St. Thomas says that such grace was necessarily implied by the Incarnation [19] For, through merely human acts, Christ could not, in his human nature, know and love His Father as a Person; could not know and love Him as His Father; could not live, in his human nature, the life of Sonship which was his. The whole spiritual life of the man Jesus, as the Gospel of St. John shows, was this living from the Father and for the Father. Of his fulness

[19]S. Th. III, q. 6, art. 6. This whole question has been more fully developed by v.g. Catherinet O.P. "La Sainte Trinité et notre filiation adoptive," Vie Spirituelle, 39 (1934), p. 113 ff. Mersch op. cit., c. 12. "Filii in Filio."

we have all received. Our grace is a sharing in his grace of sonship. He lives in us his life of sonship, which we must try to make more deeply and personally our own.

4. The SPIRIT of LOVE.

Scripture tells us something of the role of the spirit in our lives.

Speculative theology has been able to do little to give any further understanding. Some theologians say that the humanity of Christ—and we who are adopted sons—are drawn into the active spiration of the Holy Spirit.[20] If that is correct, it is meaningless to most of us. The Spirit of God is somehow identified with the personal love of God which is poured forth in our hearts,[21] to help us live the life of sons of God. We know that the Holy Spirit is the term of the mutual personal love of Father and Son. Their personal love is poured out on us, and the Spirit of God is given to us to lead us in our movement of active love towards Father and Son. We can not understand much more than that. Perhaps here theology must be content to repeat,without clarification, the teaching of St. Paul.[22] If the whole of the Christian life can be summed up in charity, it can also be summed up as the work of the Spirit of love, leading, enlightening and strengthening us in the way of love.

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[20]v.g. Mersch, op. cit.

[21]Rom. 5, 5.

[22]Cf. C. Spicq, "Vie Morale et Trinité Sainte selon St. Paul," Ed. du Cerf. Paris, 1956, c. 4.

Moral Theology

CONVERTS AND THEIR RECEPTION INTO THE CHURCH

Dear Rev. Sir,

Is there any definite period of time, when a non-catholic, conscious of his obligation to join the Church, must seek admission to the ranks of her members, under pain of serious sin? Would family reasons such as the risk of grave parental displeasure for a young man who had to live at home, of the fear of desertion by her husband if a married woman were to become a catholic, excuse the postponement of reception into the Church for an indefinite period?

PASTOR.

REPLY

A non-catholic who realises that he should become a catholic is bound to do so without unreasonable delay. Any attempt to determine accurately the meaning of "unreasonable delay" is extremely difficult; and to fix the period of unnecessary postponement to enter the Church, which would be seriously sinful, more difficult still. Where no special circumstances call for more immediate submission to the Church, a wait of a year could scarcely be a grave sin; while obstacles over which the prospective convert has no control may justify a more lengthy delay. Indefinite postponement can expose the newly-found gift of Faith to danger of loss; and neglect to correspond with so great a grace can give rise to the presumption of contempt. When extrinsic difficulties make it very hard for the convert publicly to profess his Faith, it may be practicable for him to become a catholic, unknown to all but a few who will keep his secret for the time being. He should then attend to such religious duties as are essential, in a manner which will invite no hostile attention to himself.

To reject the Faith is a serious sin, for Faith is the beginning of all holiness and salvation. The assent to revealed truth, however, is only the beginning, which is to be followed in the divine plan by a succession of graces which lead to our eternal glory. Among these graces is membership of the Church, for we do not reach our supernatural end merely as individuals in isolated relation with God the Father, but as members of the mystical body of his Son. The divine injunction laid upon the Apostles: to preach the Gospel to every creature and to baptise them, carries with it a corresponding obligation, affecting all men, to receive the Faith that comes from hearing, and to be

baptised. *Extra Ecclesiam nulla salus* is a theological principle which has many implications, but one obvious deduction from it is that those, who remain outside the Church through their own fault, cannot be saved. The Sacrament of Baptism is the means of entry into the Church: in certain circumstances, the lack of it is supplied, as far as remission of sin and union with God by charity are necessary, by the desire for the Sacrament. But the gift of the true Faith brings with it the obligation to receive the rite of Christian initiation, a re-birth "of water and the Holy Ghost." Wilful omission to be baptised is in itself a serious sin, which excludes from heaven. Likewise, those who have been made unto the likeness of Christ in Baptism, but are separated from the visible Church by schism or heresy, are bound to seek reconciliation with her in faith and charity. The Church of Christ is one and her unity is a mark of the divine mission of her Founder. Every article contained in the deposit of Faith is revealed and guaranteed, when proposed by the Church for our belief, by the same infallible authority of the Spirit of Truth.

The precept of receiving Baptism, or of seeking reconciliation with the Church (in the case of those already baptised) cannot be doubted. It affects immediately all who are aware of it. The present discussion is: when does this precept urge? Must a man take steps at once to enter the Church, or may he delay indefinitely? Between these two extremes, can any term be assigned to procrastination, so that further postponement would be a serious sin?

The precept of entering the Church is a positive precept, and so does not bind *semper et pro semper,* or at every moment until it has been fulfilled. It urges only when the nature of things or positive law demand.

Some interval is ordinarily justified and indeed often necessary. The Church is to receive the convert as one of her members, and he is to be entrusted with the mysteries of the Kingdom of God. Prudence, as well as our Lord's reminder not to cast pearls before swine, would suggest a time of probation. Then, the needs of the prospective convert to receive full instruction must be met, and so sufficient time has to be allowed for him to learn the truths he is to profess and be trained in the observances he will have to practise. When both these requisites have been provided for, some further time could reasonably be granted for devout preparation for reception into the Church. The ancient custom of the Church was to administer solemn

Baptism on the vigils of the two great feasts of Easter and Pentecost; and it was generally admitted that, where there was no special urgency, Baptism could and normally should be deferred till the next solemnity.[1] Some delay for the greater spiritual good of the convert may be permitted without question.

When further postponement seems no longer demanded, either to instruct the convert or to obtain proofs of his sincerity, and when his preparation is as complete as it can ever be hoped for, at what point is he bound *sub gravi* to apply for Baptism, or to ask for admission as a catholic (if he is already baptised)? When does the precept of becoming a member of the Church seriously call for fulfilment?

A. It may be urged that the very nature of things demands that admission to the Church be sought, if not immediately, at least within a reasonable time, and that any undue delay would be a serious matter. A person who puts off his reception into the Church deprives himself of many graces and supernatural helps, not the least of them being the effects of Sacraments, which he cannot receive, and the benefit of the prayers of the Church in which he does not share. These graces are valuable in the working out of our salvation, and it is, at least, unwise to neglect them; but unless there is some positive law fixing the time they are to be availed of, we cannot rush to the conclusion that disregard of them, even for a long period apart from contempt, will necessarily mean exclusion from heaven, provided a person uses them eventually and departs this life at peace with God and the Church. From the nature of things, every man is obliged to reach his final end and to save his soul. As membership of the Church is among the ordinary means of our salvation, no one should willingly run the serious risk of death without having received Baptism. Baptism even at the hour of death will secure salvation. Similarly, as no one can have God for his Father who has not the Church for his Mother, those who are separated by schism or heresy must return to union with her. The obligation to become a catholic certainly urges in danger of death. When there is no danger of death, it is well nigh impossible to determine any time or set of circumstances when the natural law requiring a person to become a catholic would bind *sub gravi*. Every member of the human race is bound some way to become an adopted Son of God, and every sinner is bound to obtain pardon

[1]Cf. S. Thomas S.T. III., Q. LXVIII, art. 3.

of his sin. The whole question is: *when?* In fact, it is by no means clear that the precept to receive Baptism ever urges *per se* except in danger of death.[2] The same would be true of the precept of Sacramental Confession, if we abstract from all positive law. St. Thomas discusses the question whether sacramental Confession is necessary immediately after the commission of mortal sin, and to show that it is not he proceeds from the fact that Baptism is more necessary than the Sacrament of Penance.[3] The argument then is that Baptism can be delayed, and there is no time determined when it should be received under pain of mortal sin. The same is to be affirmed of the sacrament of Penance, unless *per accidens* one wishes to perform some action, v.g., to receive the Paschal Communion, which cannot be done without previous Confession. In the *Summa Theologica,*[4] however, he teaches that to delay Baptism beyond the time appointed by the Church (i.e., the vigils of Easter and Pentecost) would be a sin, unless the delay were necessary, or with the consent of the ecclesiastical Superiors. What he seems to regard as sinful is unnecessary and indefinite delay—*de die in diem*—but he does not expressly say that the delay would be seriously wrong. If we rely solely on the application of human reason without the additional help of some positive law, we shall never reach any certain conclusion as to how long adults may postpone their Baptism or reconciliation with the Church without violating a serious obligation.

B. The divine positive law is to be found in the sources of revelation, Scripture and Tradition, as interpreted by the Church. Although there is little to guide us in Sacred Scripture, there may be some indications in the Church's legislation which can shed some light on the meaning on the divine law as to when those outside the true fold are to seek admission to the ranks of the faithful. The question of the divine law may thus be dealt with conveniently in the following paragraph.

C. It may well be questioned whether positive human law

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[2]Genicot-Salsmans. *Institutiones Theologiae Moralis.* Bruxellis. 1946. Vol. II. n. 149. "Non liquet tamen num baptismi dilatio, extra mortis periculum, per se peccatum mortale constituat. Negat S. Thomas (Suppl. q. 6. a. 5.) nisi causa ob quam differatur sit mortaliter mala, puta contemptus baptismi. Affirmant multi alii quorum sententia tamen parum ad praxim facit." The *multi alii* include Suarez *De Sacramentis,* p. 1, disp. 31, sect. 2.

[3]Suppl. q. 6, a. 5. Cf. Sent. 4. Dist. 17, q. 3, art. 1, q. 4 and Quodlib 1, q. 6, a 2.

[4]S.T., loc. cit.

could bind a non-baptised person to submit to the rite of Baptism. The civil law is obviously not competent, as the matter is one of entirely religious import. Purely ecclesiastical laws do not directly bind those who are not the subjects of the Church by Baptism. Over those who are not baptised, and consequently not her subjects, the Church can exercise no direct authority; but she can declare for them the natural and the positive divine laws, which have been entrusted to her as the custodian and infallible interpreter. The obligation to enter the Church by Baptism comes from the divine law; and any indication which may be discovered in the ecclesiastical legislation as to how or when this precept urges on those who were never baptised is no more than a declaration of the laws of God.

Baptised non-catholics, on the other hand, are subjects of the Church. Their rejection of her authority does not withdraw them from her jurisdiction. In general, they are bound by all ecclesiastical laws, except they have been expressly exempted, as v.g., in the case of the matrimonial impediment of *disparitas cultus* (can. 1070), which affects only those baptised in the Catholic Church or converted to it from heresy or schism.

Two questions thus arise:

1. Has the Church, in her office of custodian and interpreter of the divine law, appointed any time within which the precept of receiving Baptism must be fulfilled?

2. Is there any ecclesiastical legislation which determines the time when converts from heresy or schism are bound to seek reconciliation with the Church, and profess the Catholic Faith?

1. Easter and Pentecost were the regular times for adult Baptism. The Code is content to remind us that it is still fitting, where convenient, that this ancient rite be retained, particularly in cathedral and metropolitan churches (can. 772). The custom, which existed to some extent, of conferring adult Baptism only on vigils of these two feasts has long been abrogated; and in the present discipline, since the promulgation of the *Ordo Hebdomadae Sanctae Instauratus* (1956), the blessing of the font in preparation for solemn Baptism is performed only on the vigil of Easter.[5] It is not unreasonable to suppose that the public and

[5]Billuart, *Tractatus de Baptismo*. Dissert. III, art. VI, remarks that although the times of Easter and Pentecost are no longer commonly set aside for the solemn Baptism of adults, because the number of adults to be baptised is now comparatively few, the precept forbidding Baptism to be deferred beyond these feasts, or an equivalent length of time, is still in force. He holds that it is an ecclesiastical precept,

solemn administration of Baptism is intended both as an occasion in the Liturgical cycle for its fitting reception, and also to remind the neophytes that they should avail of the opportunity and become members of the Church. Since the Church's liturgy makes provision for solemn Baptism only once a year, it would seem that she does not declare there is an obligation, at least of a serious nature, to receive it within the year.[6] For a Christian who has fallen into mortal sin, Penance is as necessary for salvation as is Baptism for the unregenerate. Yet the Church binds him to go to Confession only once a year, in preparation for the Easter Communion. Could it not be said that by receiving Baptism within the year, the new convert had conformed himself to the wishes of the Church, and thus done all that our Lord required of him?

While Baptism should not be delayed longer than is necessary, there seems no serious obligation to receive it within a year, unless other circumstances, v.g., danger of death, lack of later opportunity, etc., enter into consideration. St. Thomas would hold that good reason, or some necessity (*causa necessaria*), and the consent of the ecclesiastical superiors are needed for further delay.[7] The gravity of the sin committed would depend on the cause of the delay. Positive contempt for the Sacrament would be seriously sinful. When no reasonable cause can be assigned, gross negligence is present, and this is not far removed from implicit contempt. One may well doubt, however, whether a convert who needlessly puts off his Baptism for a long time, has indeed received the gift of Faith.

2. Baptised non-catholics are subject to the Church, and like all other Christians are bound *per se* to receive the Eucharist once a year, at Easter, unless on the advice of the priest, for some reasonable cause, it is well for them to abstain for a while (can. 859). Separated from external union with the Church, they

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which binds the unbaptised person both indirectly and directly. The obligation which comes indirectly from the Church is really no more than a declaration of the divine law: "Sicut enim (Ecclesia) potuit praescribere fidelibus tempus poenitentiae et eucharistiae, quia ad illa iure divino tenentur: ita potuit praescribere omnibus tempus baptismi, quia omnes ad illum iure divino tenentur." Once the convert asks for Baptism, he becomes *ad hoc* a subject of the Church, and has to submit to the regulations of the Church with regard to the ceremonies of Baptism and the time when it is to be received. This would be directly from ecclesiastical law.

[6]Billuart, loc. cit., puts the time at 10 months, which would be approximately the period from Pentecost to Easter.

[7]St. Thomas, S.T., loc. cit.

may not be admitted to the Sacraments. The removal of the obstacle is in their own power. Convinced they have been in error, they should submit to the divinely constituted authority of the Church, by the profession of Faith and absolution—at least in the external forum—from any censures they may have incurred. To be able then to fulfil the precept of receiving the Eucharist at Easter, or at any rate, within the year, they should be reconciled with the Church accordingly. The obligation on a baptised non-catholic to enter the Church is more defined than that which urges another to seek Baptism. The Church can use her authority over the baptised person directly, and bind him to prepare for the annual reception of holy Communion.

If we presume there is no positive contempt on the part of the new convert, the question arises: what reasons could be sufficient to excuse him from the charge of gross negligence, if he delays his reception into the Church for a long time? The reasons would vary in accordance with the length of the delay which is prudently foreseen, and no definite rule can be laid down. A young person living at home, who had good grounds to fear parental displeasure, and would be leaving home in the foreseeable future, may be well advised, in the interests of peace, to wait till he was freed from the control of his parents. A married woman with obligations towards her children could wait and pray that the opposition of her husband would die down. The influence for good which she can exercise on her children would, in some way, compensate her own lack of the spiritual helps she would share as a member of the Church. Delays cannot continue indefinitely, and if the conclusion is forced on the convert that the opposition will never cease, it may be possible for him (or her) to be received into the Church, as we say, quietly, in the presence of the Priest and two trustworthy witnesses, who would keep the secret till the time came for them to testify to the fact of reception. In the meantime, the newly received catholic would be excused from such positive acts of attendance at public worship, etc., as were beyond his power, although he could no longer continue to take active part in non-catholic services.[8]

[8]"Aliquis hereticus aut paganus, qui vult veram fidem amplecti, sed hoc publice praestare non valet, sine magnis incommodis temporariis, potest clam coram duobus testibus discretis in gremium Ecclesiae recipi. At vero post conversionem, licet sit dispensatus a praeceptis positivis divinis et ecclesiasticis, quae sine gravi incommodo impleri nequent, tamen non potest amplius perficere actus, qui sunt professio haereseos aut paganasmi, v.g. recipere coenam protestanticam, matrimonium contrahere coram ministro acatholico. . . . Potest autem

As a practical conclusion, converts are to be exhorted to enter the Church as soon as possible after their instruction is complete. The desire to put off reception for a while for some good reason is understandable, but the priest may well suspect the sincerity of those who delay without cause and allow a year to pass without taking steps to become catholics.

CONSENT OF PARENTS TO CIVIL MARRIAGE OF MINORS

Dear Rev. Sir,

The civil laws demand the written consent of parents to the marriage of a minor. What is the responsibility of parents who give such consent for an irregular marriage, which is to be contracted before a non-catholic minister or a civil registrar? I have heard it pleaded in extenuation that the minor will succeed in his intentions without the consent of the parents, as a magistrate can set aside the objections of the parents. In my experience, the Guardian of Minors will not over-rule the parents on the score of religion.

SACERDOS.

REPLY

The parents would sin seriously by giving legal consent for one of their children to enter a marriage to be celebrated before a non-catholic minister or a civil registrar. This is true, prescinding from the possibility that they may secure the consent by the intervention of a magistrate. They are co-operators in the sins of the son or daughter, who is enabled by reason of their consent to go through a form of marriage which is invalid, and is but the beginning of a life of sin. The form of consent for the Marriage of Minors makes no mention of religion or of rites according to which the marriage will be solemnised. It is a civil form which authorises the minor to contract marriage in any manner recognised by the law of the land. Without it, the marriage of a minor is beset with so many difficulties and surrounded by so many penalties, as to be practically impossible. Whoever give the duly completed form—the parents or lawful guardians or, in certain cases, a civil official—remove a real obstacle to the marriage, and in some way co-operate in its taking place. The mere signing of the form, however, does not in itself express agreement with the manner in which the marriage is to

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alia peragere, quae non sunt directe professio fidei heterodoxae, ut e.g. visitare templa haereticorum, assistere funeri non catholico, immo una alterave vice assistere sermoni acatholico, dummodo tamen desit periculum perversionis aut scandali." Prummer. *Manuale Theologiae Moralis.* Editio quarta decima, 1960, vol. 1, n. 507.

express agreement with the manner in which the marriage is to be celebrated. As far as the civil law is concerned, it is a matter of personal preference and decision of the parties where and in whose presence they are married. A civil official, who gives consent instead of parents who are deceased or inaccessible, could be content to leave the parties responsible for the malice of their own actions, if he knew they proposed to marry against the laws of the Church. The same does not apply to parents, who have the responsibility of parental piety to protect their children from all harm, and should not make it possible for them to enter an illicit and invalid matrimonial union. Although they expressly give a consent for a marriage ceremony, which in other situations may not be wrong, since the same form would have to be given if the marriage were to be celebrated in the presence of the parish priest, in the present circumstances they do grant permission for their son or daughter to attempt marriage which is gravely sinful, and they share in the sin.

The plea that the consent for the marriage may possibly be obtained otherwise will not excuse the parents. If people are bent on doing evil and are determined to have their way, we may not be able to stop them, but we can always refuse to help. This applies with special emphasis where there is additional reason for keeping some one bound by close ties, as with parents and their children, from moral harm. Our correspondent states that in his experience there is no practical fear that the religious objections of the parents will be over-ruled. From a legal point of view, there is no assurance that this will always be so. At any rate, if it were fortunately true that ground for objection for religious motives were unassailable, the sin of the parents is thereby more evident.

THE SEAL OF CONFESSION

Dear Rev. Sir.

May a priest, in making his own confession, consult his confessor about advice he has given his own penitents, thus in a manner making known matter under the seal, but still under the seal of his own present confession? The consultation would be because of misgivings and after-thoughts which may arise in certain cases.

COUNTRY PASTOR.

REPLY

It is not permitted to a confessor to divulge sacramental knowledge, even to his own confessor. The sacramental seal is inviolable; and the confessor is forbidden to betray his penitent

by word or sign or any other way, or for any reason whatsoever (can. 889, par. 1.). There is a contract between the penitent and the confessor, implied in the mere making of a sacramental confession, and founded on the reverence due to the Sacrament of Penance, that the matter submitted for absolution and any other knowledge incidentally imparted with a view to making a proper confession, will never be revealed to any human being. A priest who disclosed, even to his own confessor, something he himself knew from the confessional, in such a way that both the sinner and his sin could be known with certainty would be guilty of a direct violation of the seal of confession. If the penitent could be identified only with probability, the violation would be indirect. It would certainly be *in gravamen poenitentis* to have his faults made known to any third party, even though that third party be a priest bound also by a seal of confession. Once the series is begun, who knows where it will end?

What course is then open to a confessor, who feels that he needs advice on some case submitted to him in the confessional? The easiest plan to adopt is to ask the permission of the penitent to discuss the matter with a more experienced or learned priest. Once the permission is granted, the confessor is released from the obligations of the seal within the limits of the permission and the purpose for which it was given. The theologian or other experienced confessor who is consulted should be told the question pertains to the confessional, and that the penitent's permission has been given. He will then understand that he also is bound not to reveal what he learns or to use his knowledge in any way to the disadvantage of the penitent. For the sake of necessary instruction, it is lawful to use knowledge gained in the confessional, but always with the proper safeguards, that the person consulted could not possibly know who the penitent was and there would be no danger of betraying him.[9]

JAMES MADDEN

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[9]"Sacerdos, sine licentia poenitentis, de auditis in confessione non potest loqui ne cum suo quidem confessario, neque cum confessario poenitentis. Quod ex dictis evidens est." Capello. *De Sacramentis* Taurin, 1944, vol. II, n. 587.

Titius sacerdos qui anxietatibus vexatur ob culpas quas ipse in confessionibus audiendis forsan commiserit, debet ita sese accusare ut proprius confessarius nullo modo possit in cognitionem devenire secreti sacramentalis quod Titium inter et suos poenitentes exsistit. Quodsi, propriam confessionem instituere non potest sine periculo violationis sigilli, accusatione satis generali contentus sit et ab ultiore integritate excusatur. Periculum enim violationis sigilli ab auctoribus inter causas ab integritate excusantes adnumerari solet. Ita doctrina communis et vera.—J.M.

Canon Law

PROPOSAL FOR A MODIFICATION IN THE JURIDICAL FORM OF MARRIAGE

In view of the forthcoming Ecumenical Council and the announced intention of the Holy Father to inaugurate a revision of the Code of Canon Law, it is certain that the discipline of the Church will be under serious consideration during these coming months. This is, therefore, an appropriate time for discussions of possible changes in the disciplinary legislation of the Church, and even for suggesting modifications that should be given serious consideration if a reasonable case can be established for their acceptance. The present article is concerned with canonical legislation which has already been the occasion of discussion among the canonists, and which in more recent times has been subjected to alteration by positive enactment of the Holy See; for while canonists have discussed the meaning of certain aspects of this legislation, a part of it was completely abrogated as from 1st January, 1949. The legislation in question is the canonical form of marriage, and the purpose of the article is to give support to a view that just as the legislation concerning the canonical form of marriage has undergone several changes since its introduction by the Council of Trent, so it may be argued that yet another modification—the nature of which will become very clear as the article progresses—would be for the good of souls and for the preservation of the validity of marriages. We have said that the purpose of the present article is to give support to this view because the present writer is not alone in advocating the proposed change. In the first place, however, our present purpose will greatly be served by a survey of the history of the canonical form of marriage and an account of the reasons behind the various phases of development through which it has passed.

Canon 1081 of the Code of Canon Law states that marriage is effected by the mutual consent of the parties. This principle was always acknowledged by the Church, and hence for hundreds of years—in fact up to the time of the Council of Trent—no external form for the expression of this consent was imposed by

the Church as a condition for the validity of the marriage. This, however, did not mean that the Church either explicitly or tacitly approved clandestine marriages; on the contrary, there were prohibitions against contracting marriages in this way but these prohibitions affected only the lawfulness of such marriages and left their validity intact. The Council of Trent, however, changed this situation, and in its famous decree *Tametsi* the Council imposed for the first time a definite external form in which matrimonial consent was to be expressed, and the penalty for the failure to observe this form was the invalidity of the marriage. The Council stated: "Those who otherwise than in the presence of the parish priest or of another priest acting with the permission of the parish priest or of the Ordinary, and in the presence of two or three witnesses, shall attempt to contract marriage, the Holy Synod renders utterly incapable of thus contracting marriage, and decrees that such contracts are null and void" (Sess. 24, de Reform. Matrim., cap. 1). Clandestine marriages were no longer simply unlawful; they were now also invalid. Although this decree had certain limitations in regard to its application in various places, it nevertheless remained true that the principle of requiring a definite external form for validity in the celebration of marriage was established by the Council of Trent.

For the purpose of this article, however, it is of the utmost importance to keep in mind the reason that prompted this Tridentine legislation. While, as has been pointed out, the principle that consent makes the marriage had always been acknowledged, the difficulty was to establish and prove that matrimonial consent had been given. And it was necessary to be able to do this especially in order to impede certain disastrous consequences that could follow and in fact were following, in as much as some were ready and able to take advantage of this difficulty in proving consent to escape from such marriages by claiming that proper matrimonial consent had never been given; and the Council of Trent expressly adverted to these abuses. Thus, the motive behind this Tridentine legislation which demanded the observance of an external canonical form for the validity of marriage was to make it possible to prove and preserve the existence of marriages once validly contracted, and to achieve this by prescribing the observance of measures which would make it public and definite that a marriage had taken place.

Thus, the onus would no longer be on a person to establish the fact of the celebration of a marriage; rather the onus would be on a person to establish the invalidity of a marriage which without doubt had actually been celebrated.

The decree of the Council of Trent did not make any evident distinction between baptized Catholics and heretics, so that in consequence it seemed that even these baptized non-Catholics were subject to the external form of marriage as determined by the decree. This omission of any express distinction between baptized Catholics and heretics certainly appeared to imply that marriages of heretics which were not contracted in accordance with the external form established in the *Tametsi* were invalid. However, on 4th November, 1741, Pope Benedict XIV, in a Declaration which was originally intended for Holland and Belgium, expressly confirmed the exemption of heretics from this canonical form of marriage. Subsequently, by means of various additional declarations, the Benedictine declaration of this exemption was extended to other territories where the Tridentine decree had been promulgated. This Benedictine declaration actually gave explicit expression to a twofold exemption: it exempted heretics from the juridical form of marriage when they contracted marriage between themselves, and it exempted them when they contracted marriage with Catholics. Thus, in fact, by a communication of privilege, Catholics themselves enjoyed an exemption from the canonical form of marriage when they contracted marriage with heretics, although in this case the marriage was condemned as unlawful.

Again, however, it is of the greatest importance to our present purpose to keep in mind the motive behind this exempting legislation, and it is patent. The legislation aimed at the avoidance of invalid marriages by exempting from the canonical form those baptized persons who, at least in great part and as time went by, would contract marriage even in good faith without observing the canonical form of marriage. In other words, once again it was a matter of legislation that aimed at the preservation of the validity of marriages, and it is worthy of note that in this effort to preserve the validity of marriages the exemption was even communicated to Catholics themselves whenever they contracted marriage with heretics.

A particular reply of the Holy Office on 6th April, 1859 (to the Bishop of Haarlem in Holland) is also of importance in this

matter of the evolution of the canonical form of marriage. This reply actually introduced a notion which was to influence the law as it would be incorporated into the Code of Canon Law in 1918. The reply exempted from the canonical form of marriage Catholics who, from a period prior to the attainment of the age of seven years, were reared in heresy, and also those Catholics who were educated by heretics and those who in childhood had fallen under the influence of a heretical sect and had affiliated with it. Once again, however, the mind of the Church in this legislation was evident. It was to preserve the validity of marriages as far as possible, for the persons included within the ambit of this exemption were not likely to observe the prescribed canonical form, an omission which would be either inculpable or at least not unexpected in the circumstances; and the Church, by means of this exemption, was preserving the validity of their marriages and was not imposing invalidity as a penalty of ignorance or even of simple disobedience if this latter should have existed in the contemplated circumstances.

On 19th April 1908 the famous *Ne Temere* decree came into effect. By virtue of this decree all baptized Catholics, without any regard to religious upbringing, were bound by the canonical form of marriage. The previous exemptions ceased so that baptized Catholics, even in the absence of Catholic upbringing and even when they married non-Catholics, were bound by the canonical form and contracted marriage invalidly if they did not observe it (although certain local exemptions existed even under this legislation, as, for example, in Germany). In fact, the *Ne Temere* legislation marked a definite change in the Church's traditional tendency in this matter, and this should be sufficiently clear from what has already been said of the previous stages in the evolution of the juridical form of marriage. The reason is that no complete exemptions any longer held and the invalidity of marriages resulted from the non-observance of the juridical form even when this non-observance was the consequence of invincible ignorance. From that point of view the *Ne Temere* legislation could be regarded at least to a degree as surprising; and hence, in turn, it was not altogether surprising, even if somewhat anomalous, to find that while this absolute norm existed in the law a certain relaxation was admitted in practice. The reason for this statement is found in the fact that on 31st March 1911 the Holy Office affirmed that those persons who were included

within the exempt categories of the reply of 6th April 1859 (referred to above) could, even after the *Ne Temere* decree, have recourse to the Holy Office in each individual case. Thus, at least in practice a rule was adopted which showed a return to what had become the traditional mind of the Church, as our brief survey has made clear; for it showed the desire and will to preserve the validity of as many marriages as possible and especially where inculpability was or could be involved, as well as not to impose invalidity as a penalty of ignorance or good faith.

On 19th May 1918 the Code of Canon Law became effective; and while the general principle was that all persons baptized in the Catholic Church were bound by the canonical form of marriage, the Code restored to the law the exemption that had previously prevailed and been given legal recognition before the *Ne Temere* decree. This exemption was expressed in canon 1099, §2 in these terms: "Without prejudice to the prescriptions of §1, 1°, non-Catholics, whether baptized or not baptized, if they contract marriage among themselves, are nowhere bound to observe the Catholic form of marriage; and, likewise, those born of non-Catholic parents, even though they have been baptized in the Catholic Church, who have grown up from infancy in heresy or schism or infidelity, or without any religion, as often as they contract marriage with a non-Catholic party." There does not seem to be any reasonable doubt that the motives prompting this legislation of the Code of Canon Law with its exempting clause were in accord with what in reality had become the traditional mind of the Church, namely, to preserve the validity of as many marriages as possible and not to make invalidity a penal consequence of ignorance and inculpability. And the subsequent interpretations of the phrase *ab acatholicis nati*, by which the exemption was declared to apply even to persons born of marriages in which only one parent was a non-Catholic or in which at least one parent had apostatized, were in keeping with these motives.

But the evolution of the canonical form of marriage was not yet complete. On 1st January 1949, by virtue of a Motu Proprio of Pope Pius XII, the exemption from the canonical form of marriage which was contained in canon 1099, §2 was abrogated. From that date every person baptized in the Catholic Church, whether aware of it or not, whether conscious of its import and

obligations or not, is bound by the canonical form of marriage under penalty of the invalidity of the marriage if this canonical form is not observed. This, therefore, is to be the consequence even if the non-observance of the canonical form is the inevitable result of inculpable ignorance, even if there is not the slightest degree or suggestion of bad faith. In view of what has been said about the evolution of Church legislation concerning the canonical form of marriage it must be said that this removal of the previously existing exemption appeared to mark a departure from the spirit and tendency of previous legislation concerning this matter, since marriages which under that legislation would have been valid now become certainly invalid, and since ignorance and good faith no longer constitute guarantees against the penalty of invalidity. This, of course, is not to say that the legislation aimed to increase the number of invalid marriages; but it is a patent fact that this is an inevitable consequence. Hence, the canonical legislation in this matter has really returned to the condition that existed between the time of the *Ne Temere* decree and the Code of Canon Law; and in fact it is more severe since it restores that condition without the acceptance in practice of the exemption that the Holy Office was prepared to admit during that 1908-1918 period, notwithstanding the wording of the law and its apparent exclusion of any such exemption.

The real purpose of this article is not simply to advocate the restoration of the previously existing exemption and a more lenient attitude to that extent. It is something of a far more radical nature, for its purpose—in the establishment of which the foregoing remarks are of the greatest importance—is to advocate what would be in effect almost a return to the pre-Tridentine condition as far as the observance of the canonical form of marriage is concerned, but with an important difference. Its purpose is to advocate that the observance of the canonical form of marriage should be made a condition for the lawfulness of the marriages of baptized Catholics, but not a condition for the validity of such marriages. It would mean that a baptized Catholic would be able to contract a valid marriage outside the Catholic Church, independently of his religious upbringing, provided, of course, he was otherwise free to marry and not bound by an invalidating impediment.

To our way of thinking—and this observation is made with

all respect and deference to legitimate authority—it can be argued with every justification that the history of the canonical form of marriage favours such a contention. This history, as we have endeavoured to illustrate in our relatively brief survey, emphasizes the reality of three factors: (1) The imposition of a definite external form of marriage had its origin in the necessity to combat an admittedly serious evil, as has been pointed out: (2) Notwithstanding the imposition of the obligation to observe a definite external form of marriage the tendency in ecclesiastical legislation was to endeavour to preserve the validity of as many marriages as possible, especially by means of exemptions: (3) The tendency was also to avoid a situation in which invalidity would be made to appear as, or would in fact become, a penalty or consequence of ignorance and good faith. But it is possible to achieve these three ends even if the observance of the canonical form is made a condition only of liceity and not of validity, and perhaps to achieve them even in a greater degree; while it can also be shown that the good of souls—the supreme reason and purpose in all ecclesiastical legislation—will also be promoted by what may seem at first sight to be a radical measure that could only have the opposite effect.

To advocate that the observance of the canonical form of marriage should be made only a condition for liceity is not necessarily to advocate that there should not be any definite external form for its validity. After all, the difficulties and abuses that led the Council of Trent to impose a definite external form in the first place were very real and serious, and they are of such a nature that adequate precautions must still be taken against them. But under modern conditions an adequate and efficient method exists to safeguard marriage against the renaissance of a similar situation to that which confronted the Council of Trent; and hence as a means of avoiding clandestine marriages without imposing the canonical form as a condition of validity, it is suggested that the Church should adopt as a condition of canonical validity the civil form of marriage as it is prescribed in the respective territories. In point of fact this civil form must nowadays be observed by all, whether this civil form is prepared to acknowledge marriage before a civilly registered minister of religion as sufficient or whether it requires the presence of its own civil officials as necessary for the

recognition of the marriage as valid. Thus, not only is this form observed by non-Catholics, but in point of fact it is also observed by Catholics.

In advocating the adoption of the civil form of marriage as sufficient for the validity even of marriages involving Catholics we are not conceding to the civil authority itself the power to legislate in regard to the marriages of baptized persons, for that is and will remain completely outside its competence; nor is it even to delegate such power to the civil authority. It simply means that in this matter and only to this extent the Church would canonize the civil law and make the civil prescription a part of the Canon Law, so that as far as baptized Catholics are concerned the form of marriage prescribed by the civil law is no longer merely civil; rather as far as the validity of marriage is concerned it would have become a canonical form. To propose the adoption of the civil form as a canonical form that would suffice for validity is not to advocate an entirely new principle. For examples can already be found in the Code of Canon Law itself of a similar adoption and canonization of the civil law; thus, in the matter of contracts (cfr. canon 1529) and legal adoption as a matrimonial impediment (cfr. canon 1080), the Church has adopted the civil law of the respective territories and made it part of the Canon Law, and it is only in so far as it has become part of the Canon Law that it produces any canonical effects. In this way, especially in view of the necessity and accuracy of modern methods of civil registration, it will be comparatively easy to establish that a marriage has been performed; and thus the state of affairs that gave rise to the Tridentine legislation will be avoided, and it will be avoided by legislation which will simultaneously preserve the validity of marriages and make their celebration a matter of public record.

It is obvious that this proposed change to make the present canonical form of marriage a requisite only for lawfulness would aim to preserve the validity of marriages, and in fact would inevitably increase the actual number of valid marriages. It would mean that marriages which under the present legislation would be invalid because not contracted before a priest in observance of the present canonical form would be valid. It can hardly be denied that under the present legislation of the Code some baptized Catholics will contract invalid marriages without culpability and without ever even knowing that they were

bound by the canonical form of marriage (the reality of this factor constituted justification for the previously-existing exemption); while under the proposed change these unions would be valid marriages and invalidity would not be the consequence of inculpable ignorance and good faith. It is also clear that under the present legislation some Catholics contract invalid marriages in the full knowledge that they are entering invalid unions, and under the proposed legislation these unions also will be valid. While validity even in these cases is a desirable thing, this need not mean that such Catholics will be permitted to flout the Church's law without penalty. For as far as lawfulness is concerned it will still be obligatory for Catholics to observe the present juridical form of marriage, and the deliberate non-observance of this canonical form would be regarded as a serious violation of the law; and hence the Catholic who knowingly and deliberately violated this requirement for the lawfulness of marriage would be guilty of grave sin, but, provided the canonically adopted civil form was observed, would have contracted a valid marriage. Moreover, under such legislation as is being proposed, it is possible that the legislator may deem it advisable to attach a canonical penalty to the law for its violation. Thus, the deliberate non-observance of the canonical form of marriage required for liceity would be punished by the guilt of grave sin and possibly by the additional incurrence of a canonical penalty; but the validity of the marriage would be intact and a truly repentant offender could be admitted to the Sacraments without such admission being dependent on the convalidation of the marriage and thus generally on the will of a non-Catholic, who would be required—and understandably would be reluctant—to make an equivalent confession that his marriage was invalid and that any children born of the marriage were illegitimate.

In the Motu Proprio which abrogated the legally established exemption from the canonical form of marriage as from 1st January, 1949, Pope Pius XII specifically alluded to two factors as the motive causes of the change; and hence it may justifiably be concluded that these motivating factors in the law as it now stands cannot be ignored in contemplating new legislation concerning the same matter, and new legislation which involves a radical alteration in the form to which the legislation in this matter returned in consequence of that Motu Proprio. These two

factors were: (1) The good of souls: (2) The removal of difficulties in the solution of marriage cases. It is our belief that these two factors, far from being ignored or overlooked in our proposed alteration of the law, may be used effectively in support of this proposed change and may assist in producing the persuasion that the alteration being advocated is perhaps not so radical as it appeared to be at first sight.

In the first place, we feel that it can justifiably be urged that the suggested change can be for the advantage of souls, and thus can achieve the ultimate purpose of all desirable ecclesiastical legislation. The following observations can be adduced as arguments which, both singly and cumulatively, support the contention that the good of souls can be promoted by the suggested change in the legislation:

(1) It appears to us that of itself the validity of marriages should be to the advantage of souls rather than their invalidity; and hence, even independently of any other considerations, the proposed alteration immediately appears to have a great deal in its favour.

(2) The proposed alteration will also be to the advantage of souls in that it will make the erring Catholic's return to the Church a far easier procedure and one with greater hope of a successful outcome than would be the case if it was dependent upon the convalidation of the marriage, especially since this latter requirement would in effect demand even from the non-Catholic party an acknowledgment of the invalidity of his marriage which he almost certainly, and quite understandably, regards as valid. Experience has shown that the necessity of convalidation has proved to be an obstacle of considerable difficulty in the way of the return of a repentant Catholic.

(3) This acknowledgment of the validity of the marriage (under the proposed legislation) and the way in which the Catholic party would be able to be admitted again to the Sacraments are surely factors that may produce a good effect on a non-Catholic party to such a marriage, and also as a consequence prove to be beneficial to any children who may be born of the marriage. In fact, as far as the children of such a marriage are concerned, it could even be in many cases a guarantee of their Catholic upbringing.

(4) It need not be assumed that the proposed change in

legislation would redound to the detriment of souls in that it would mean an automatic increase in marriages of Catholics contracted outside the Church. In the first place, it would be comparatively easy to make this assertion with the intention of placing advocates of the proposed alteration on the defensive; but in turn it would also be a most reasonable attitude on their part to expect proof of the truth of this assertion. In the second place, it should be remembered that where a good Catholic is involved it is most reasonable to conclude that the violation of the Church's law which would be involved in the neglect of the canonical form which would still be required for lawfulness, could itself be an adequate deterrent for them in this matter just as it already is in other matters; while if a lax Catholic is involved it is more than possible that the marriage would not in any case have taken place in the Church and would have been invalid, while in the new circumstances it will at least be valid and the chances of the ultimate return of such Catholics could be increased by that very fact.

(5) It may also legitimately be urged that the Catholic education and upbringing of the children of such marriages would be better guaranteed when it can be acknowledged that they have been born of a marriage that is valid ecclesiastically as well as civilly. Of course, it would have to be conceded that in cases of Mixed Marriages contracted in neglect of the lawful canonical form the *cautiones* would not be given in the formal way required by the law; but, on the other hand, a valid marriage without the formal guarantees is surely more desirable than an invalid marriage without them. Moreover, the fact that the formal guarantees may not be given does not necessarily mean that the guarantees themselves are definitely absent, and they may exist in an equivalent way even though the marriage is not contracted according to the form required for liceity. The circumstances which may occasion the neglect of the lawful form of marriage may themselves be compatible with a disposition that will not cause any difficulty about the Catholic baptism and education of the children or the religious practice of the Catholic spouse, so that at least implicit guarantees—which in any case are admitted as being adequate for the validity of the dispensation even under the present legislation—may be verified.

(6) It may justifiably be urged that the proposed alteration in the law would be considerably to the advantage of souls

especially in non-Catholic countries, where the likelihood of Mixed Marriages is greater and consequently the danger of marriages outside the Church is greater; for undoubtedly it would safeguard the validity of many of these marriages and at the same time assist towards the removal of the misunderstanding and connected scandal that arises from a not-uncommon belief, especially among non-Catholics themselves, that the Catholic Church does not acknowledge the validity of the marriages contracted by non-Catholics, a belief that is not unconnected with the doctrine of the invalidity of the marriages of Catholics outside the Church which are generally contracted with non-Catholics. In this connection it will not be altogether out of place to draw attention here to another advantage of the suggested alteration in the law. If, as has been suggested, the civil form of marriage of various places is adopted as sufficient for the canonical validity of marriage, a situation would be established in which even baptized non-Catholics would actually be conforming to canonical requirements since they would continue to observe the civil form which, in our hypothesis, would have become also a part of the Canon Law. This fact is mentioned because, as the matter now stands, baptized non-Catholics are not bound to observe either the canonical form of marriage from which they are expressly exempted by canon 1099, or the civil law which cannot legislate for baptized persons except in so far as the merely civil effects of marriage are concerned (cfr. canon 1016). Hence, even if the ecclesiastical exemption of non-Catholics in this matter remained in the law, the factual situation would be that all baptized persons would observe at least a form of marriage that would be adequate for the validity of marriage from this point of view.

(7) It is not easy to appreciate that a situation is for the good of souls in which some persons at least are certainly bound by a positive law which they may have little or no opportunity of ever knowing and with the consequent invalidity of their marriages. But under the law as it now stands this kind of situation must inevitably occur.

(8) In this context of the good of souls the legitimacy of children must surely be regarded as a factor to be given serious consideration. Now under the present law children born of marriages contracted outside the Church in violation of the canonical form are illegitimate in Canon Law. It is true that by

positive provision of Canon Law children born of putative marriages are regarded as legitimate, even though a putative marriage is in fact an invalid marriage (cfr. canon 1114). But it is also true that by virtue of a special reply of the Pontifical Code Commission (26th January 1949) the status of a putative marriage is not to be granted to the marriage outside the Church of a person who was bound to observe the canonical form; and this holds independently of the possible good faith of the other party to the marriage. The consequence is that the children of such marriages are canonically illegitimate. Under the proposed alteration to the law, however, legitimacy must be conceded to the children born of these marriages since the marriages themselves will be valid provided the canonically adopted civil form is observed; and this surely is to the advantage of souls.

The second factor referred to in the Motu Proprio of Pope Pius XII was that the removal of the hitherto existing exemption from canon 1099, §2 would constitute a notable contribution towards the solution of difficulties experienced by Matrimonial Tribunals. Certainly in endeavouring to discover reasons adequate to explain what appears to us to be a radical departure from the tendency of hundreds of years—as we have endeavoured to show in the historical part of this article—it is remarkable just how prominent a place this particular theme occupies in discussions on the matter. Not only is it adverted to in the Motu Proprio itself, but it is the theme to which writers on the matter unfailingly and almost always immediately devote their attention. In fact the impression can easily arise that this appears to be the principal reason motivating the revocation of the exemption hitherto contained in the law, namely, that the difficulties encountered under the pre-1949 law permitting the exemption are easily and completely done away with by removing the exempting clause, although automatically this would increase the number of invalid marriages.

The point we wish to make here is that, if the desire to facilitate the work of Matrimonial Tribunals is to be accepted as a legitimate determinant of what should be expressed in canonical legislation, this factor can actually be used as an argument in favour of the adoption of the alteration to the law that is being advocated. The reason is that under the suggested alteration it would follow that complete certainty of the validity of marriages on this ground would be assured as soon as

the fact of the celebration of the marriage was established. Moreover, this certainty—and thus the removal of problems—would be obtained by a method that would safeguard the validity of marriage; or, in other words, Tribunals would thus be enabled to secure certainty of the validity of marriages, and not certainty of their invalidity. Surely this method and this kind of certainty are preferable. It is not easy to consent to the principle that the convenience of Matrimonial Tribunals should serve as a determinant of the nature and form of legislation; but if their convenience and the amount of work and difficulties with which they are called on to contend is to be taken into consideration, then it can scarcely be ignored that under the suggested alteration to the present law regarding the canonical form of marriage many cases need no longer even constitute matter for the Tribunals. Consequently, it is considered that it is in favour of the proposed change that it does not sacrifice the validity of marriage as an expedient to alleviate the difficulties of Matrimonial Tribunals; and that it appears to achieve this desired end—the alleviation of such difficulties—by giving uncomplicated certainty, not of the invalidity of marriages, but of their validity.

CONCLUSION

The following observations are offered by way of a summary and conclusion to the article:

(1) The suggested alteration to the present law implies that what has been a requisite for the canonical validity of marriages for a period of almost four hundred years should now become a requirement only for lawfulness; and if, from that point of view, the proposal appears to constitute a radical change, it should be recalled that, after all, the original Tridentine legislation itself may be said to have marked an even more radical (and not by any means unanimous) change, since it required for validity something which over a far greater period of time had been required only for lawfulness.

(2) A judgment on the proposed change should not be coloured by the fact that in this matter we ourselves have only known legislation which requires the observance of the canonical form as an essential condition of validity, and have, perhaps, become accustomed to think that, whatever alterations may be made in the legislation, the observance of the canonical form as a condition of validity should be retained. The very act of the

Council of Trent itself is a sufficient indication that we should not allow ourselves to reason in that way.

(3) The proposed alteration is in regard to a matter in which the law—as our historical survey has shown—has undergone several changes since it was originally introduced by the Council of Trent, and the last alteration was as recent as 1949. May not this fact be regarded as indicative of a certain dissatisfaction on the part of the Church itself, and even as suggesting that the matter has not yet been closed, thus leaving the way open to proposals affecting the legislation concerning the canonical form of marriage?

(4) The proposed change can achieve the purpose which prompted the introduction of legislation of this nature by the Council of Trent in the first place; and it can achieve this result, not at the expense of the validity of marriages, but rather as a preservative of their validity.

(5) The proposed alteration does not make invalidity, even unintentionally, the rather drastic consequence of ignorance and good faith.

(6) It can legitimately and effectively be argued that the proposed change will be to the advantage of souls, both of Catholics and non-Catholics.

(7) It can also be argued with good reason that the proposed change is consistent with the traditional mind of the Church.

(8) The proposed alteration in the law will remove difficulties in the solution of marriage cases, and will achieve this effect through the preservation of the validity of marriages.

(9) How often have we heard enunciated the principle: Sacramenta sunt propter homines. May not this principle, quoted so often in other cases, provide support for the present proposal which can open the way to the reception of the Sacrament of Matrimony and also of the other Sacraments?

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Liturgy

GENUFLECTION BEFORE DISTRIBUTING COMMUNION—CHOIR RULES AT SOLEMN REQUIEM MASS

Dear Rev. Sir,

1. At our small convent the custom is to consecrate only the number of small particles required for Communion at that Mass. When, therefore, the priest returns to the altar, the ciborium is empty, the tabernacle closed and locked, does he genuflect?

2. Attending a solemn Requiem Mass recently, I noticed that the clergy stood up at the *Pater noster*. Has there been some change in the rule that they should kneel until the *Agnus Dei?*

MILES.

REPLY

1. If there are communicants at Mass, the priest, after taking the Precious Blood and before taking the ablutions, genuflects, and puts the consecrated particles in the pyx, or, if there are only a few communicants, on the paten, that is, if they were not already in a pyx or ciborium from the outset. When all have been communicated, the priest returns to the altar, saying nothing; nor does he give them a blessing, for that will be done at the end of Mass. If the particles were laid upon the corporal, he cleanses the latter with the paten, and puts any crumbs that he discovers into the chalice. This is the procedure described in the *Ritus servandus,* x. 6. The details for the absolution, with the genuflection before and after have been changed because of the omission of the *Confiteor.* Therefore, in the circumstances described in the query the priest does not genuflect when he returns to the altar after distributing Communion.

Should Communion be distributed from a ciborium in the tabernacle, the celebrant opens the tabernacle, genuflects, closes the tablernacle door (unless the tabernacle is empty), uncovers the ciborium and taking a particle turns around and says: *Ecce Agnus Dei,* &c. On returning to the altar, he places the ciborium

on the corporal, genuflects, covers and veils the ciborium, and replaces it in the tabernacle. Before closing the tabernacle door, the celebrant again genuflects.

2. The change observed by MILES was introduced by the new Code of Rubrics which requires that at a solemn Requiem Mass all in choir, even prelates, kneel from after the *Sanctus* (ab expleto *Sanctus*) until the *Pater noster* with its introduction exclusive (cfr. 521 (c)). Therefore, those in choir, which in our conditions includes the clergy vested in surplice and soutane even though they may be sitting in the nave, should stand after the final *Amen* of the Canon. It would seem fitting for the celebrant to pause for a moment in order to give them time to stand up before he sings *Oremus*.

It may be no harm to recall the rule for the singing of the Communion antiphon in sung Masses, Requiems included. *Per se* the Communion antiphon is to be sung while the priest-celebrant receives Communion, but if some of the faithful go to Communion, as happens more frequently nowadays, the antiphon is begun while the priest is distributing Communion (*Instruction* S.C.R., 1958, n. 27 *c*).

CONSECRATION OF ADDITIONS TO A CEMETERY

Dear Rev. Sir,

We have in this parish, alongside one of our small outside churches, a Catholic cemetery, 'consecrated' towards the end of the last century.

About a year ago the trustees decided it was necessary to enlarge the cemetery; they simply shifted the fence forward about twenty feet. The fence is about fifty yards or more long, and all the land was and is Church property.

The question arose as to whether the new portion should be 'consecrated' anew, or could it be said to partake of the 'consecration' of the original cemetery.

COUNTRY PASTOR.

REPLY

The Code of Canon Law lays down that the bodies of the faithful are to be buried in a cemetery which has been blessed, with a solemn or simple blessing, according to the rites given in

the approved liturgical books (can. 1205, §1). The Roman Pontifical contains a rite for the blessing of a cemetery, and this is known as the solemn blessing or, especially amongst pre-Code commentators, the consecration. The Roman Ritual also provides a rite for the blessing of a new cemetery (tit. IX, cap. ix, 22). The blessing of the Ritual is reserved to the Ordinary, but a priest may be delegated to perform the rite. A Bishop may use the simpler formula of the Ritual, especially in the case of a small cemetery.

As to the need to bless the part added to a cemetery which has been solemnly blessed, Nabuco states that the added portion must be blessed with the simple blessing of the Ritual. The original blessing does not extend to the new portion (*Pontificalis Romani Expositio,* Petropolis, 1945, II, n. 143, 11). Of course, if the new section constitutes a notable addition, then the solemn blessing should be repeated (ibid.). This opinion is quoted with approval in *Matters Liturgical* (1959, n. 87 *a*); Schulte-O'Connell also agree, unless the added part be so small as not to need a special blessing (*Benedicenda,* New York, 1955, p. 45).

PUBLIC ROSARY DURING MASS

There have been a number of inquiries as to whether it is still permissible to have the Rosary recited publicly during Mass, especially in the month of October.

For the reasons which will be given below, it seems certain that it is not permissible to recite the Rosary publicly during Mass. We should note carefully that we are speaking of *public* recitation of the Rosary, because if any individual finds in the Rosary a more effective method of uniting himself with Christ in His sacrifice, he is fully entitled to employ this method. However, when the Rosary is recited publicly during Mass it moves into a different category, for it then affects the whole congregation and must be judged by the appropriate norms for external participation of the faithful at Mass.

The particular problem of the Rosary arises because of the injunction of Pope Leo XIII prescribing the daily recitation of five decades of the Rosary during the month of October, together with the Litany of Loreto and the prayer to S. Joseph, in all parochial churches and public oratories dedicated to our Lady, *aut mane dum Missa celebratur, aut vespere coram SS.mo Sacramento exposito* (cfr. note in Australian *Ordo*).

Several documents may help to shed some light on the question. Archbishop Heenan of Liverpool asked the Sacred Congregation of Rites whether the prohibition of n. 12 of the Instruction on Sacred Music and Liturgy, 3rd September, 1958, must be understood to mean that even in the month of October it is no longer lawful to recite publicly the Rosary during the celebration of Mass. The reply was: *Marialis Corona dicenda est extra Missam* (cfr. *Clergy Review,* May, 1960, p. 306). The paragraph of the Instruction referred to in the query states that 'it is unlawful to intermingle (*commisceri*) exercises of piety with liturgical functions; if need be the former may precede or follow the latter.' Without judging the value of the reason given in the query, the Congregation replied that the Rosary should be said outside of Mass. The reply was a private one, it has not been published in the *Acta.* It was dated 6th February, 1960.

On 28th September, 1960, Pope John XXIII addressed a letter to the Cardinal Vicar of Rome calling for a special devotion to the Rosary during the month of October (A.A.S., 1960, pp. 814-817). In the exhortation issued on the following day Cardinal Micara prescribed the daily recitation of the Rosary, the Litany of Loreto and the prayer to S. Joseph in all the churches and public oratories of Rome, but there was no mention that these should be recited during Mass or before the Blessed Sacrament exposed (cfr. *Osservatore Romano,* 1st October, 1960). Moreover, an *Ordo* for 1962, published in Rome this year, and which previously contained the notice about the recitation of the Rosary during October in the same terms as found in the Australian *Ordo,* has omitted the clauses: *aut mane dum Missa celebratur, aut vespere coram SS.mo Sacramento exposito.*

From the above data the following conclusions may be drawn: 1. the Rosary should not be recited publicly during Mass; 2. in the month of October, when the Rosary cannot be said at some other time during the day, it should not be said during Mass, nor should we regard it as being prescribed in such circumstances; 3. it seems doubtful whether by general law the Rosary must still be recited before the Blessed Sacrament exposed during October, although it may still be prescribed by some local law. There does not appear to be any reason to expect a more explicit declaration concerning the first point, since the rules given in the Instruction of 3rd September, 1958, provide adequately for the situation.

All are aware of the remarkable changes which have taken

place in course of the last fifty years in our approach to the public worship of the Church. We are really feeling the impact of the progress in the fields of biblical, theological and liturgical studies. We have a wider and deeper understanding of liturgical rites, especially the Mass, than was available in the last century. Special attention has been drawn to the intimate union of the faithful with Christ in their membership of the Mystical Body and 'that it is the duty of the Christian people to take its appointed part in the liturgy' (Pius XII, *Mediator Dei*, ECTS, n. 5). This 'is a sign of the providential action of God in the present age, of the movement of the Holy Spirit in his Church, to draw men more closely to the mysteries of faith and the treasures of grace which flow from the active participation of the faithful in the liturgical life' (Pius XII, Assisi Congress, 1956, A.A.S., 1956, p. 712). Here we have 'proof that the immaculate Bride of Jesus Christ is vigorously alive' (Pius XII). A practical example of this changing attitude may be found by comparing the reserve of a decree about Dialogue Masses given by the Congregation of Rites in 1922 (D.4375) with the principles enunciated in the Instruction of 1958. The theology of the Eucharist received ample treatment in the Seminary course of former years, but how much attention was given to the study of the sacred rite in which the mystery is celebrated? And yet the Church had developed that rite, under divine guidance, as the authentic method for realizing the purpose intended by Christ when he gave to 'his beloved Bride a visible sacrifice such as the nature of man requires' (Council of Trent).

Nevertheless modifications in familiar public devotions inevitably raise questions in the minds of pastors and people alike, while the pastoral office imposes on priests the obligation to acquaint themselves with the principles underlying the positive directives of the Church. Failure to do so may nullify the Church's efforts to sanctify men, or at least render such measures less effective. A comparison from modern life may illustrate the point. The imposition of a speed limit on our roads is intended to secure road safety, but the intelligent co-operation of motorists is still necessary in order to avoid accidents. Similarly, the Church has declared that the nature of the Mass demands the participation of the faithful and she assures us that this will yield abundant fruits. At the same time the effective use of the proposed methods presupposes an understanding of what is involved, and this calls for instruction, reflection and practice.

A simple affirmative may be an adequate juridical reply to the question: 'Is the public recitation of the Rosary forbidden during Mass?' but it hardly does justice to the more important matter of the principles involved. The questioner has learned of a change in established procedure, but he has not been enlightened as to the why or wherefore.

In its reply quoted above the Congregation of Rites did not say that the Rosary should be said outside of Mass for the precise reason given in the query. It seems that the Instruction contains other rules that exclude the public recitation of the Rosary during Mass more directly than does the rule forbidding the mixing of exercises of devotion with liturgical rites. The Instruction does approve the use of congregational prayers and chants in the vernacular during low Mass. These are not part of the liturgical text, in fact literal translations of the liturgical texts are forbidden (cfr. n. 14 c), but they must be really suited to the individual parts of the Mass (n. 30). A little lower down, speaking of popular religious chants during low Mass, the Instruction again insists that such chants must be appropriate to the different parts of the Mass (n. 33). It is obvious, therefore, that the structure of this central act of Catholic worship must be preserved. When the faithful attending Mass are unable to participate directly in the rite by reciting in Latin the parts proper to them, they should be drawn into the spirit of the various parts of the rite proper to them by appropriate prayers or chants in the vernacular. The purpose of congregational prayers and chants is not merely to fill minds with pious thoughts, but to enable the congregation to participate to the best of their ability in the rite of the Mass, a rite which has the specific form determined in the Roman Missal. Judged by these standards the congregational recitation of the Rosary during Mass must be excluded, it was not designed for this purpose. As a private prayer during Mass the Rosary may meet the personal needs of some individuals, and the Instruction is careful to point out, following the teaching of Pope Pius XII, that they are quite free to use this method.

But have we proved too much? The rite of the Mass has not changed, and less than a hundred years ago the Rosary was prescribed, at least alternatively, during the month of October! The rite of the Mass has not changed, but our appreciation of the nature of the liturgical rite as the expression of the divine

mystery has deepened, thanks to the research of scholars and the prudent guidance of the Church. The promotion of frequent Communion and the early Communion of children may serve as a parallel for the possibility of a growing appreciation of certain truths of our faith. The prayers of the Missal have always kept before us the intimate union of priest and people with Christ in the offering of the holy Sacrifice. What we have come to appreciate better is how excellently that interior union is expressed in the external rite of the Mass. Hence the Church speaks of a *more complete* participation, when to the essential interior union with Christ through his minister there is added the corresponding external words and gestures. This is true both for the individual and for the congregation. For the individual, because the whole man, body and soul, is then worshipping God, while the common prayers, chants and dialogue with the priest-celebrant, the visible minister of Christ, expresses outwardly the worship of the community whose members are united to Christ their Head by supernatural bonds.

CODE OF RUBRICS AND LITTLE OFFICE B.V.M.

The following changes have been made in the Little Office of Our Lady by the introduction of the new Code of Rubrics:

i. the *Ave Maria* is not said at the beginning of the Hours;

ii. the commemoration of the Saints is suppressed;

iii. the *Kyrie, Christe, Kyrie* are not said before the prayer;

iv. the Hours are concluded as in the Divine Office, i.e., after the prayer: *Dominus vobiscum* or *Domine, exaudi orationem meam, Benedicamus Domino, Fidelium animae.* Therefore, the *Pater noster* is not said, nor the final anthem of our Lady except after compline;

v. the final anthem of our Lady is said after compline, with the versicle and prayer. Then *Divinum auxilium* is said, and nothing more, i.e., *Pater, Ave, Credo* and *Sacrosanctae* are omitted.

vi. the antiphons are doubled before and after psalms at all Hours.

vii. the prayer *Aperi* is no longer printed in the Roman Breviary.

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Homiletics

THE CONSPIRACY OF THE SANHEDRIN.

Christ began His immediate preparation for His Passion and Death on the Sunday prior to the Friday of His Crucifixion. His visits to the Temple area with their accompanying discussions, His Meal with the Apostles in the "upper room" with its urgent instruction, His prayers and warnings on the Mount of Olives are the happenings which the evangelists have preserved from this last week in Christ's life. Luke on behalf of the other three evangelists gives us the time schedule very succinctly: "Now in the daytime he was teaching in the temple but went forth and passed the nights on the mountain which is called the Mount of Olives. And the whole people would come unto him early in the temple to hear him." This memorable week of the Passion appears in the Gospel narrative as a "unit" that can be as well constructed from all four evangelists as the "Passion Unit" itself. Whether the problem of the Cleansing of the Temple will ever be solved to the satisfaction of all or whether new knowledge of the peculiarities of the Jewish Calendar will give absolute certainty about the time setting of the Last Supper, cannot as yet be answered. However, no matter what the answers to these difficulties may be, at least the general outline of the last days of Christ upon this earth is clear to us.

Behind these last and well known scenes in the last part of the life of Christ there is surely another series of happenings which in many respects is shrouded in mystery, namely the Conspiracy of the Sanhedrin. From the little that has reached the Gospel pages we can be safe in saying that this conspiracy must also have involved frequent visits and prolonged discussion in the Temple area, urgent sessions in upper and private rooms, and probably exploratory journeys to the Mount of Olives, all of which culminated in a final journey to the Mount of Olives. In fact, the journey to arrest Christ in the Garden of Gethsemani must have been the last phase of a series of activities on the part of the Sanhedrin which are strikingly similar to the pattern of Christ's Own activity during that last week. As the members of the Sanhedrin, Christ's "enemies," as He Himself styles

them, walk as it were in the very footsteps of Christ, their conduct seems to give a depth of meaning to His earlier controversial warning, "He that is not with me is against me." The outcome of the conspiracy of the Sanhedrin carries with it the warning that one may walk in the very path of Christ but conceal a heart and mind that is far from Christ.

In Matthew's Gospel what we may call the conspiracy of the Sanhedrin meets us at the very beginning of Christ's public life. The Pharisees and Sadducees appear, as it seems, before John the Baptist as a "brood of vipers." With this early preview of the dispositions of the parties controlling the Greater Sanhedrin, the Pharisees and Sadducees drop from Matthew's narrative while for some six vital chapters the evangelist, without the interruption of their presence, records the incomparable words and self evident works of Christ. The Pharisees and those who are no doubt their scribes then reappear and dominate the scene for what is almost the next six chapters always coming between Christ and a possible correct and unbiased appreciation of His Mission. Then as Christ begins the last and critical year of His Ministry and as He turns by way of the parables from the Jews to the Apostles, the Pharisees are joined in Matthew's text by the Sadducees or High Priests. This prominence given to the Pharisees and to their then continued appearance with the Sadducees is something that we must not miss in Matthew's Gospel. It points to the explanation of the otherwise mysterious victimisation and death of the Lamb of God.

Not only the Pharisees but also the Sadducees were ardent and absolute legalists. Indeed, if the legalism of the Pharisees faltered, it would be strengthened and supported by the not disinterested legalism of the Sadducees. Both parties, neglecting the real message and influence of the Prophets, stood for the supremacy of one thing, the Law. Our Divine Lord introduced by John the Baptist who was "more than a prophet" and insisting upon a prophetical and interior approach to the fulfilment of the Law was from the very beginning in a dangerous position. Christ's invitation "Learn of me" must have been highly provocative. According to Matthew the reactions of Pharisee and Sadducee were identical: the Pharisees were "scandalised" and the High Priests were "indignant." And while the Pharisees "took counsel as to how they might destroy him," the High Priests "sought to seize him." In the first Gospel the issue seems always

to be the same, namely the supremacy of the Law and even the very last discussion of the Sanhedrin "two days before the Passover" as to how to take Christ by guile and put Him to death, still occurs in a context intensely legalistic in tone. No wonder the central theme of the all-important Sermon on the Mount as it now stands in the first Gospel is that Christ came to destroy neither Law nor Prophets. This is the vital factor behind the life and death of Christ. It is a factor that possibly explains the presence of the "ninth" Beatitude: "For thus did they persecute the prophets before you." It is Christ's true prophetical role that gives to the Sermon on the Mount a unity that surpasses even historical unity.

Whatever the interdependence of the Synoptic Gospels in other respects, the outline of the attitude of the Sanhedrin to Christ as given by Mark and Luke is very close to that given by Matthew. If the significant Matthean association of Pharisee and Sadducee does not appear so early or so generally in Mark and Luke, the prominence given by them to the term "Scribe" must make the reader aware that from the very beginning trained observers were always at hand to assess Christ's attitude to the Law. And indeed Mark's double assertion that Scribes came "from Jerusalem" to observe the Galilean work of Christ suggest at once that the High Priesthood must also be implicated. In fact, the very small incidents such as those reproduced in our Sunday Gospels involving what may seem at first sight to be rather a tiresome and uninteresting preoccupation with the Mosaic Law and Tradition take on a new aspect. The unadorned pen pictures of Mark become historical pieces of fundamental importance in the explanation of Christ's death. Christ the Prophet and the fulfilment of the prophets dies at the hands of a nation now dedicated to a way of life that does not go beyond the letter of the Law. The conflict between the prophetical and legalistic outlook must have influenced the choice of material in the very basic tradition underlying Mark's Gospel.

Luke's treatment of the Pharisees and Sanhedrin is a study in itself. Although duplications have little place in Luke's disposal of matter, the evangelist introduces three incidents in which Christ dines at the invitation of a Pharisee. On the other hand although so considerate in his treatment of his characters, Luke would have us know in Christ's words or his own comments that the Pharisees disregard "justice and the

love of God," they were "an abomination" before God, they were "fond of money," they were victims of pride and intolerance. Furthermore, while at one time they set traps to catch Christ in speech at another time they try to prevent His extravagances. Some of the Scribes commend Christ but Christ does not commend the Scribes. Perhaps in all this contrasting treatment Luke is quietly placing on the one side the terrible indecision of the Pharisees about the adequacy of their own ideal and on the other side the unerring conviction of Christ as He stood in the presence of Moses the Legislator and Elias the Prophet on His way to Jerusalem and His death. Matthew's lengthy record of Christ's denunciation of the Pharisees is missing in Luke, but where it might have been expected we have Luke's first and belated reference to the sinister designs of the High Priesthood. While Christ endeavoured to the very end to penetrate the barriers of legalism and while the crowds "hung upon his words" the High Priesthood joined the Pharisees in sending spies to trap Christ in speech so that they could deliver him "to the power and the authority of the Governor." With his skilful mingling of the reactions of the people and the new or increased activities of the Sadducees, Luke unknowingly leads us to John's approach to the conspiracy of the Sanhedrin.

In the Synoptics, therefore, Christ must be sacrificed so that the narrow way of life of Jewish legalism might continue. The fourth Gospel acknowledges and confirms this Synoptic approach but goes one step further. In masterly fashion John shows that while the individual feared those who held the power among the Jews, those same Jewish leaders feared the people. And in fact, the fear on the part of the Sanhedrin was in the final analysis not so much from the danger that might beset the post exilic ideal of the Law as from possible danger to their own position and power. In the Synoptics the Jews are defending a way of life, and in the fourth Gospel they have succumbed to the lure of political power. In this the Gospels are ever old but ever new. Modern life has shown us what dangers lie in a combination of dedication to an ideal and political power.

John's observations concerning the attitude of official Judaism occur only in brief sentences, but they do seem to recur with studied regularity. The critical period begins with the approach of Tabernacles some six months before Christ's

death. Having mentioned for the second time in his Gospel that "the Jews sought to put him to death," John informs us that Christ was now reluctant to go into Judea. It seems that only when the crowds had gathered for the feast, giving Him some measure of protection that Christ appeared in Jerusalem. Although Christ spoke "boldly" no one now dared to speak "boldly" concerning Him. Christ asked publicly as to why they did not proceed against Him and "some" of the people of Jerusalem wondered secretly that the Rulers did not act. In all this we seem to have a hint that those in power had reached the decision that Christ must be destroyed but were undecided as to how to accomplish their resolution. In John's excellent record of the Roman Trial we find that the Jewish authorities tried successively and desperately political charges, religious charges and finally political intimidation before they could bring about Christ's death. It is only in view of this later knowledge that we come to appreciate fully the problem that faced the Sanhedrin. Between Tabernacles and the end of the year there were two unsuccessful attempts to arrest Christ, a double threat of physical violence to His person and an enduring threat of excommunication for any recognition of His teaching or work. Keeping in mind that the Sanhedrin was the governing body in the land their failure to take Christ during this period speaks volumes for His absolute integrity and innocence. Indeed the "attendants" whom the Sanhedrin apparently tried to use to create a situation unfavourable to Christ as they afterwards used Pilate, their superior, seem to have been as much influenced by Christ as Pilate himself during the Trial.

With the opening of the new year the problem of Christ for the Sanhedrin, as reflected in John, became more difficult and complex. The High Priests realised that if they destroyed Christ they must also remove Lazarus. The Pharisees, the nominal party of the people, could only warn the High Priest that Christ had been allowed to go on too long and that now "they prevailed nothing as the whole world went after Christ." Therefore in those final months as Christ in the Synoptics walks the roads that lead to Jerusalem ever announcing that He is about to die, "the Jews" in John's Gospel seem to stand almost motionless and bewildered as they struggle with the problem of Christ's destruction. With this situation before us we can better understand Our Divine Lord's subdued approach to His Messianic claims. It seems that He would want to do

nothing to give "the Jews" a pretext for the destruction of one whom they recognised in Council as the author of "many signs." Indeed John's portrayal of the desperation of the Sanhedrin strongly suggests that anything like the deliberate and provocative action of the cleansing of the Temple would be at that time out of harmony with the policy of Christ and the need of the Sanhedrin.

It is hard to pass over the fateful words of the Sanhedrin made early in the new year and set by John side by side with the miracle of Lazarus. "If we leave him all will believe in him and the Romans will come and take both our place and our nation." This is one of the most memorable and significant pieces of dialogue in John's Gospel. The Jewish nation had experienced almost one hundred years of Roman administration. The lessons learnt from popular insurrection and political aspiration had been all too harsh and a worthy prelude to the final lesson in the year 70 A.D. Caiphas had unique ties with the High Priesthood and a remarkable record in length of service under the Romans. There was no other High Priest of the century who could then and later exemplify so well the proposition that friendship with the Romans spelt success. And therefore the fear that Christ's activity would cause the Romans to take their "place," that is in all probability, the Temple and therefore the High Priesthood and the power that went with it, caused Caiphas to state once and for all that as a political expedient Christ must die. Therefore in those final weeks Christ's death became a necessity not so much because of His approach to the Law as on account of the possible threat which He created to the political security of the Jewish government. To the issue of the Law there was joined the issue of friendship with Caesar.

What caused the Sanhedrin to act in the days of the Passover is unknown. In the Synoptic narrative it seems to be explicit enough that it was the one thing that must be avoided at all costs. However in John it appears as the one thing that must surely happen in view of the happenings of the previous feasts. In fact the ever growing tension in John seems to tie the unnamed feast of chapter five to the later part of Christ's life rather than to an earlier phase of His ministry. One thing that seems to emerge from both John and the Synoptics is the terrifying indecision of the Sanhedrin and a change in motivation on the part of its leaders. Perhaps in this we have

the clue to the otherwise mysterious session before Annas that marks the opening of the Passion.

The conspiracy of the Sanhedrin must have been one of the saddest memories of the life of Our Divine Lord. His last words at His trial as He heard the terrible sentence will never find a parallel in legal history: "he that delivered me to thee hath the greater sin." But Christ's answer to the Sanhedrin's complete preoccupation with a superficial and legal way of life has been given in the Matthaean invitation, "Come to me all you who labour and are burdened." Christ's reply to the disastrous decision of the Sanhedrin to destroy Him will ever live in the Johannine formula "If I be lifted up I will draw all things to myself." Christ's response, therefore, to the double challenge in the Synoptics and John was that of charity. The two motives that brought about the death of Christ can be for us a two-edged sword severing us from love of self and love of human power. Adhering merely to the letter of the law can prevent that growth in sanctity which calls for a spontaneity and perfection in charity. A love of power and position can divorce us from Christ's ideal according to which His follower should carry neither staff nor wallet so that he would never be reckoned with the agents of human power. The continual triumph and fulfilment of God's Will in the face of the worry and indecision of the Sanhedrin must help us to put aside human preoccupation and cast all care upon the Lord. The "do not be solicitous" of the Mount of the Sermon finds its greatest illustration on the Mount of Christ's condemnation.

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Notes

WHY ARE THERE NOT MORE PRIESTS?

Almost everywhere there are not enough priests for the work which the Church is striving earnestly, almost desperately, to do. In some countries the shortage amounts to a crisis. In parts of Australia the position is at least serious. One cannot help thinking of the defection of children of many Catholics in America at a period in its history corresponding to that which Australia has now entered. The following remarks apply to present conditions in our own country.

We all must know that there will not be more priests if there are not more prayers. "Pray the Lord of the harvest to send workers into his harvest." That is the first thing to attend to, as prayer obtains the sending-grace from God. Divine grace is necessary because when a young man decides to become a priest he chooses a state eminently supernatural and of its nature related to the salvation not only of himself but of countless souls.

For the same reason as grace is necessary to lead a man into a seminary it is also necessary, in a continuous sequence, if he is to persevere in doing his duty there. Praying for more workers in the harvest includes praying for seminarians as well as praying for suitable subjects to make the decision to study for the priesthood.

The necessity of grace being granted, and allowing that we have not prayed enough for "vocations," or as I here prefer to call them "decisions" to enter the priestly state, what other factors have contributed to the existing shortage?

A minor contributing cause has been that administration has become more highly organized and specialized. Especially in the larger dioceses, it is necessary for a certain number of priests to remain at desks and for others to take care of special classes of people. This inevitable development withholds some potential pastors from parish work. But the number is not high; nothing like that in America, for example.

A major factor has been the great reduction—in some places almost a cessation—of the traditional supply of priests from Ireland. That fertile source of missionary activity now waters other and less fortunate mission fields. American and English

dioceses also, which are not missionary territory, have been successfully soliciting Irish subjects with substantial enticements to serve them. This situation has thrown us on our resources and productivity. We had been living, so to speak, on another country's capital. Now we are put on our mettle.

A second major factor has been the unprecedented increase in population since the last war, both by immigration and natural increase.

Although the proportion of Catholic immigrants has been high, there have not been many candidates for the priesthood out of their families.

The natural increase and the birth rate both have risen astoundingly since the thirties. The Commonwealth Bureau of Census and Statistics has supplied the following statistics for Queensland over the last thirty years, at seven-year intervals. In 1932 the birth-rate was 18.6 (per 1000) and the number of births 17,367. In 1939, the birth-rate was 20 and the number of births 20,348. In 1946, the birth-rate was 24.8 and the number of births 27,024. In 1953, the birth-rate was 23.9 and the number of births 30,782. In 1960, the number of births was 35,213.

Supposing an average youth coming direct from school to the seminary is 18, the rise in births 18 years previously should be reflected at present more than it actually is in recruitment for the secular clergy. But there is still time to do something about the next few years, when the number of age-eligible youths will rise more steeply. Admittedly it is one thing to be of the right age and another thing to be suited for the priesthood, and still another thing for the desire of the priesthood to be in a person who is otherwise suited.

St. John Bosco is credited with saying that one out of every three Catholic men could become priests. This year an experienced and devoted Christian Brother said that out of the fifty or so boys in his senior class well over a third appeared to have the human qualities required in a candidate for the priesthood, but that for some unknown reason none seemed even to entertain the idea, much less to make the necessary effort. This reluctance, or lack of interest, is not peculiar to this year's class: it has happened time after time that none, or one or two respond to the ideal put before them in "Vocation Week" or by those who specially visit the school for that purpose.

If the Church in Australia is full of life and youthful vigour, why does it not produce more priests? To make the question more

concrete, why did so few of those Catholic youths who finished secondary school in 1960 want to be priests?

One cause seems to be materialism, or a purely natural view of life. The country's economic expansion, especially felt during the last decade, was a mixed blessing. An eminent Australian prelate once said that prosperity is not good for the soul of a nation. It may be humiliating for us as a Catholic community to admit it, but the prospect of immediate lucrative employment in other walks of life may indeed be too great a lure for the vast majority of youth to resist. Lads have been able to get £1000 a year at a time when they would still be studying Philosophy if they had entered a seminary. Material advantage *ought* not to outweigh the priceless good of the priesthood, of course, but one is tempted to think that it often, very often, does.

Another consideration is that youth who require training for some positions in the service of the State or Commonwealth do not pay to be trained, but are actually paid while in training. Friends of one of our students asked him in all seriousness whether he was paid while studying in the seminary. The question seems preposterous, but it indicates a mentality which is abroad.

Then the whole way of life is altered. General social problems and youth problems are interlocked with the vocation problem. Home atmosphere is different, and even if good Catholic parents would like to have a son a priest they would be slow to mention it. Money gives people a feeling of independence, and easily earned money buys frequent entertainment. This does not promote reflection on the serious side of life or create conditions that prepare the young for sacrifices.

Unfortunately, parents, far from hoping to have a son in the priesthood, sometimes are dismayed at the prospect. Fathers and mothers are known to dissuade boys, telling them that they ought first to get to know the world or to go to the university for a year in order to test themselves. Some mothers do not like to "lose" their sons, and after a few more years they are capable of complaining that some girl "stole" him.

Again, the prospect of responsibility which the priesthood entails is probably a deterrent. An employer in Brisbane with long experience has said that it has been hard in the post-war years to find men who are prepared to take executive positions. They prefer to work a certain number of hours and then forget

about their work, the plant and the future of the business. No one can blame individual men for this attitude, but it does not make for the common good or for their own good in the end. There is some parallel here with unwillingness to become priests. Priests exist for the good of the Catholic community and if the laity do not provide them there is no future for the Catholic community, including the children of those who are always ready to let others do the grind.

Finally, the very shortage of priests is a cause of increasing shortage. A vicious circle is set up, unless something is done to break it. If there are not enough priests to get to know the Catholic people, especially in their homes, boys will not want to become priests, simply because they will not know priests. By knowing priests is meant seeing them in the right light, in priestly work at which they voluntarily do something personal and are not just performing a ritual that the young might regard as necessary and impersonal. Especially efficacious is a priestly interest in the individual, no matter how young he be. Perhaps some of us can remember an impression made on us by a particular priest early in life, one who was kind, gentle and considerate, who treated us as individual persons. Little persons are very important—*maxima debetur pueris reverentia.* Our Lord paid more attention to them than his Apostles could then understand.

All things considered, the most potent human factor in "vocations" seems to be some priest's interest in the individual soul. There are very many excellent priests in Australia, but there are ever so many more boys who never get to know any of them, except at the distance of a congregation or in a first Friday rush to confession. Most boys at secondary schools are out of their parishes all day and if their pastor visits their homes they are not there.

The best way of showing interest in a person is by visiting him. When someone calls on you you are honoured; you feel that he is your friend and a new relationship begins, and after that you are interested in him. Pastoral visitation in the right circumstances will leave the right image of the priest in the mind of an individual. The priest is a "man of God," and if he leaves that image he will do better than if he preached a sermon. "Man of God" comprises two concepts: first, he is a man, and second, of God.

Recently I asked the twenty students at the Queensland Provincial Seminary who were ordained to the priesthood in 1961 if they would be prepared to say, and to allow to be published, what was the main influence in turning their minds and hearts to the priesthood. (Their answers have been published in a seminary magazine, "Follow," which the students produced in September this year.) The twenty men had various backgrounds: from city and country, direct from school and from secular employment—and these latter from various walks of life. Out of the twenty, no fewer than thirteen said that the most influential factor, as far as they could judge, had been the impression they had got of some priest.

In the priest who unconsciously influenced them, what left the right impression was described as his "priestliness," or "priestly qualities," or "example," or "hard work." One (only one) attributed his decision to a sermon on vocations, as a proximate cause, but he too believed that the example of a priest who used to take him to country centres to serve Mass as a boy of 10 to 12 years was the remote cause. All of the answers were given without any prompting or leading question on my part. They give some clue to the question, why some good youths want to become priests while others have no such desire. But the problem is as complex as life itself, and even more so.

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TOTAL PRE-MARRIAGE EDUCATION

Speaking to the Roman Rota on October 25th, 1960, His Holiness Pope John urged education for marriage to combat the growing dangers to family life:

"Now, the resplendent beauty of Christian teaching on the essence of Matrimony requires, above all, the continued and persuasive instruction of the faithful in order to reach all levels of social life. It is particularly necessary, indeed urgent, that this instruction should reach principally the youth who are preparing themselves for marriage. It should rouse their consciences and make them reflect on the grave need for religious instruction in this very delicate matter. Oh yes, We know that in many areas programmes have been started—making use of the press and other technical means—to make this duty of instruction more efficient

and even attractive; scientific publications, counsellors, courses of study and specialised preaching. We heartily approve such experiments which when slowly undertaken, delicately tested and duly approved by higher ecclesiastical authority, give reason to hope for an ever comforting harvest of good fruits. One must proceed in this direction with all energy and sincerity. The conditions of the times make this imperative. Youth—particularly the period of engagement—sometimes sees the limpid clarity of ideals clouded by misunderstandings or insufficiently disciplined sentiments and expressions of love."

This appeal reminds us of those made by Pius XII and especially that of Pius XI in *Casti Conubii* where we read:

"Since the universal and enduring rehabilitation of marriage calls for a return to God's Law and plan, it is of first importance that the faithful should be well instructed concerning marriage; instructed by the spoken and written word, not once nor superficially but frequently and thoroughly, with clear and weighty arguments, so that these truths may take hold of their minds and move their hearts. . . . If the modern subverters of marriage spare no pains—by discourses, writings, books, pamphlets and other means without number—to mislead the minds of men, to corrupt their hearts, to cast ridicule upon matrimonial chastity, to belaud most shameful vices, then much more ought you Venerable Brethren . . . devote your efforts to meet their attack."

As far back as 1944, our own Australian Hierarchy devoted their annual Social Justice Statement to "The Family" in which they have written:

"We propose that marriage should be regarded as a career of first-rate importance for which the most careful preparation is needed . . . so everyone should commend and encourage those societies and organizations which will assist young people to understand the glorious career open to them and the value of their having thorough training for marriage."

The purpose of this article is to outline a recent successful attempt by such an organization—The Oblate Catholic Centre—to implement these desires of the Popes and of the Hierarchy, here in Australia. In treating of our efforts to give this "thorough training" requested by the Hierarchy, I wish to do so under the following titles:

1. What is Total Pre-marriage Education?;
2. Outline of Our Efforts to Provide it;

3. How it is Provided—The System;
4. Success Over Three Years.

WHAT IS TOTAL PRE-MARRIAGE EDUCATION?:

To establish this, it is necessary to ask what is the purpose of the Sacrament of Matrimony. The answer of course is, the Christian Family. Family life which is fully Christian, is the fruit of the Sacrament of Matrimony and likewise must be the aim of all education, of all "thorough training" for marriage. It is for this reason that the writer hesitates to make use of the term "Marriage Preparation." This term is accurate only when properly understood but it can easily be and in fact commonly is accepted to mean preparation for the actual wedding or marriage ceremony.

We may distinguish two phases—one remote, the other proximate—in this education for marriage. If I may use a comparison: in the training of a future priest, there are two steps; the first is the basic Christian education received from childhood in the home; the second is the immediate training which is given in the seminary during the years preceding Ordination. There are similarly two phases in pre-marriage education: one remote, the other proximate. The remote education consists of a fundamental Christian training which is primarily the function of the home. Without this the proximate education for marriage can only rarely be entirely effective. Its importance has been stressed by Pius XI in *Divini Illius Magistri.* This function of the Christian home is not within the scope of an article like this. However one can readily see that the gradual emphasis on and improvement of the proximate preparation for Marriage will eventually lead to the formation of homes where the climate is present for better remote preparation.

Confining ourselves therefore to the immediate or proximate pre-marriage education, may we attempt to define the subject by saying that our aim must be: "The formation of an attitude of mind and will where: The Christian ideal is seen as desirable above all others; each is enabled to make intelligent choice of a suitable partner; mutual sanctification through marriage is considered essential; an accurate concept of real love is present; the psychology of the opposite sex is reasonably understood; a Christian and realistic attitude to economics is accepted; the importance of the ceremony and its sacramental graces appreciated; the basic principles of canon and civil law on marriage understood; adequate knowledge of anatomy and

physiology are received; the laws of God in marriage are fully grasped and accepted; the need for effort towards early adjustments are realized—All prior to marriage."

This, I submit, is the requisite knowledge for that "thorough training" which we call Total Pre-marriage Education. May I now outline our efforts to provide it?

AN EFFORT TO PROVIDE IT:

Pope Pius XI appealed that this education be given "by the spoken and written word, not once nor superficially but frequently and thoroughly." Our effort consists in: (a) imparting the information; (b) use of a definite system in doing so.

Let us glance at the outline of the information imparted. We offer the young people: A course of thirteen lessons in printed form and of approximately 20 pages each; each lesson written by an expert on the subject dealt with; the lessons have one theme throughout: "The resplendent beauty of Christian teaching on the essence of Matrimony" (John XXIII); the titles of the lessons are as follows: 1. The Christian Attitude to Marriage. 2. Choice of One's Partner. 3. Nature of Christian Conjugal Love. 4. Psychology of the Sexes. 5. Spirituality of Marriage. 6. Economic Preparation for Marriage. 7. The Canon Law of Marriage. 8. Australian Civil Law of Marriage. 9. The Marriage Ceremony Explained. 10. Anatomy and Physiology of the Sexes. 11. Relations, Pregnancy and Birth. 12. God's Laws for Married People. 13. The Need for Early Adjustments.

This is the first element in our effort to provide Total Pre-marriage Education. The system we use is just as important—perhaps even more so. We feel sure that without a system, we will provide information, but not formation; knowledge perhaps, but not education. Thus the system is essential.

HOW IT IS PROVIDED—THE SYSTEM:

As we have seen, we are warned in *Casti Conubii* that this education must be given "not superficially" but "thoroughly" and our present Holy Father expressed the desire that we make use of all modern means of communication to that end. Consequently, it is clear that for Total Pre-marriage Education, neither the passing over of the sublime doctrine nor the imparting of facts is adequate. The knowledge must be given, but given in a way and by a means which is suitable to the end in view, i.e., the formation of a total Christian attitude to every aspect of marriage. The obvious possibility and likelihood that young pre-marrieds will read a book on marriage, read the more interesting parts of the

book, or listen to without fully understanding and remembering, the spoken word, must be precluded as useful but inadequate aids to pre-marriage education. For these reasons the system we make use of is as follows: The lessons (i.e., texts) are given out for study one by one and never otherwise (this is so even when the course is given orally); each lesson is accompanied by a 50 point questionnaire which must be answered and returned for correction before receipt of the next lesson; mistaken notions are pointed out in the returned questionnaire when the student receives it; failure to reach an 80 per cent minimum mark means that the questionnaire must be repeated; if they are engaged, the fiance and fiancee are encouraged to study the lessons and discuss them together; difficulties are answered and advice given at any time during the course; when complete, the couple possess a 350 page reference manual on Christian Marriage.

With this system we see the gradual formation of the student. The system may appear severe, but three years experience has shown us that young Australians appreciate our efforts and their own and then write to tell us how they awaited each lesson with interest and received it with gratitude. "Although the course has demanded much time and thought, I have never regretted having commenced it. It is very true that most of us spend a great deal more time and money on things of much less importance," wrote a student from Toowoomba. A few short lessons in theology will be of little avail in preparing a young man for priestly orders nor will medical lectures alone turn out competent surgeons. We cannot then refuse to our young people intending to marry what we believe to be a just and indispensable right for all professions and especially for priestly and religious vocations.

It is for this reason that we insist our students study *all* the lessons, study them in a *definite order,* study them *one by one,* study them *together* (when possible), and answer the *questionnaires* for each lesson. Not infrequently of course, we are asked for lessons 10, 11 and 12 on their own. This request is always refused and the reason given. The conviction that information will take the place of formation, that marriage education means sex instruction, is still deep in some Catholic minds. There is little likelihood of this "thorough training" stressed by the Hierarchy, without the personal effort which is implied in study of the subjects, in mutual discussion and in correct answering of questions. Convinced as we are that the

dignity and importance of the subject demands nothing less, this is the system we use.

RESULTS OVER THREE YEARS:

The course was launched with the approbation of His Eminence Cardinal Gilroy just three years ago. It was brought to the notice of priests by direct mailing and before the people by advertisements in the Catholic Press. The novelty of its approach to pre-marriage education might in some way account for its initial Australia-wide success. This response, however, has continued and increased so that over the three years a total of just over 4000 young people have enrolled for the course. These enrolments have come from every city and most country parishes throughout the country. Requests for the course also come from New Zealand, New Guinea, Philippine and Gilbert Islands and from Malaya.

Our files show hundreds of *letters* expressing sentiments like this one: "This course has been most helpful now and I'm sure later. Its greatest benefit was the way it showed clearly God's plan in marriage and the beauty of it all. We are most grateful." Or this one: "The insight this course has given both my fiancee and myself is so great that had we not studied it, we would not have believed so much could be contained in such a small space. Every lesson was extremely comprehensive and very simply written. God's place in the home has not been fully understood by us until we studied this course."

Priests throughout Australia write encouraging letters with such sentiments as these: "I am grateful that you are supplying a long awaited solution to the marital problems of young people. . . ." "The need is definite and the plan seems adapted to the need." "This course is just what we have been waiting for." It is to the wonderful co-operation of the priests in recommending the course to their parishioners that most of all we owe the success of our apostolate. I would like to mention here that the Lessons 10 to 14 are not given to anyone unless they secure a priest's signature to the effect that they are genuinely preparing for marriage.

More recently *Secondary Schools* have adopted the course as part of the syllabus during fourth and fifth years. This means that the Brothers and Sisters administer the course up to the ninth lesson. As one engaged student wrote on completing the course: "The first nine lessons are probably of more benefit

if studied a long time before marriage is even contemplated as when one is emotionally involved many of the things that are said in the course seem to be merely of academic interest." The Hierarchy advised this long-distance preparation when they wrote in "The Family"—"We propose that marriage should be regarded as a career of first-rate importance for which careful preparation is needed. This preparation must begin at school." The students who study the nine lessons under the supervision of their teachers are eligible for the remaining four lessons when they become engaged. In the meantime they are well prepared to resist wrong notions of this great sacrament.

A small number of parish priests have established the course on an oral-plus-textual basis in their *parishes*. This method has thus been proven feasible on the parochial level or among groups of smaller parishes. A few of the Bishops have already expressed their interest in having the course established on a diocesan basis.

Thus we are assured that the "thorough training' which is implied in Total Pre-marriage Education can be accomplished. The desire of the Hierarchy expressed in 1944 is being implemented. Thousands of names in the files of our Centre bear testimony that this Total Pre-marriage Education can be accomplished not only in large centres of population but in the smallest parishes. If this demanded a group of specialists in every parish, then it would be necessary to deny the privilege to many young Australians. This is not so. To admit this would be to say that the Church in each parish is unable to accomplish one of the essentials of her mission—adequate preparation of the faithful for one of the sacraments which has been entrusted for her dispensation. With the methods already developed and proven, Total Pre-Marriage Education is within the reach of every sincere young Catholic in our country. Young people in our cities, in larger parishes, in our small country towns, working in the mines at Mt. Isa, on the Snowy River Construction corps and on Mobile X-Ray Units are receiving this essential education.

These are the results of an apostolate commenced just three years ago. We are grateful to God first of all for this success. May we also acknowledge here with gratitude the help of those members of the Hierarchy who lent their spoken and written encouragement to the work and to the clergy on whom so much depended in order that our apostolate become known.

DESMOND O'DONNELL, O.M.I.

Oblate Catholic Centre, Penshurst, N.S.W.

Book Reviews

THE ONLY LIFE, by Rev. Albert J. Shamon; Milwaukee, 1961; Bruce; vii + 133pp.; 3.25 dollars.

Life! Philosophers dispute about it, sociologists write books on it, doctors dedicate their lives to it. But what is life? Father Shamon's intention is to explain, not the life around us, but the life within us, the "only life," for it is God Himself. His message being directed primarily to the laity, the author is concerned with making this life attractive and desirable, rather than proving its necessity and value. In showing the wonders of God's operations within us and our own co-operation with Him, there is no need for tedious apologetics. The spiritual life is clearly the "only life" for the layman.

To enable us to live this life, God has poured into our souls all the supernatural equipment necessary. By using this correctly and constantly we can come ever closer to God, but we must play our part, which consists in an irrevocable break with sin. This high level of purification is of course beyond us, i.e., without Christ's all-consuming death for us. He is our way and our life. To bring this plan of salvation to perfection, God had chosen out a worthy Mother for His Son. This same woman is the Mother of men, with an irreplaceable role in bringing them to an ever greater perfection. So all things work together towards the fullness of the only life, perfect sanctity, when our love for God is undivided and unchangeable.

Most lay people smile when they hear they are called to be saints. But Father Shamon maps out the layman's path to sanctity so simply and attractively that I'm sure this little book will change many otherwise mediocre lives. The detailed bibliography and notes at the back of the book indicate the wealth of theology and thought that has gone into this work. Yet the author's skilful use of apt, concrete illustrations is combined with a simple and popular style of writing that makes rich Catholic dogma easily understandable and inspiring. Some will find the title and chapter-headings somewhat uninteresting. But they well express in summary form the intention and plan of the author. In his preface he writes, "It is high time we call for saints." This popular presentation of the reality of the spiritual life will go a long way towards making the "only life" loved and lived by the Catholic laity.

A.J.M.

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CONFRATERNITY TEACHERS' GUIDE, by Joseph B. Collins, S.S., S.T.D., Ph.D. Milwaukee, 1960; The Bruce Publishing Co.; xxix + 458pp., indexed; 31/9.

The author is the professor of Catechetics in the Catholic University of America and the national director of the Confraternity of Christian Doctrine. He has published this work as a textbook for the training of teachers for the Confraternity, the official parochial society catering for the religious instruction of all Catholics outside Catholic schools.

Professor Collins deals with the problem of religious instruction under the three aspects of general catechetics, religious instruction in the primary school, and religious instruction in the secondary school. Each section contains a comprehensive treatment of the problems peculiar to it, and is supplemented by exercises, suggested assignments, and select bibliographies at the end of each chapter. The author has also provided a brief outline of the history and aims of the Confraternity, and of the relation between the kerygmatic approach and the catechetical methods; he has included, in an appendix, the more recent Papal pronouncements on catechetics.

Throughout the book the principles of the kerygmatic approach are applied: the insistence on a Christocentric view of the truths of faith; the necessity of presenting these truths "as an organic whole;" the importance of biblical and liturgical instruction in catechetics. Full use is made of the latest developments in educational methods, with particular attention being devoted to teacher-centred and pupil-centred techniques.

This complex subject has been handled with thoroughness and skill; the author's style is simple and clear throughout. It is a work that will be appreciated by anyone engaged in the religious instruction of Catholic children in non-Catholic schools.

J.K.

SHORT NOTICE

MEDITATIONS ON THE OLD TESTAMENT—the Psalms by Gaston Brillet of the Oratory, translated by Jane Wynne Saul, R.S.C.J. Desclee and Co., New York, 1960, pp. 243, price 3.50 dollars.

The recitation of the breviary occupies so important a place in the life of a priest that any study or meditation that will help to make it a better prayer is to be encouraged. Thus it is that early in their course students for the priesthood should commence to familiarise themselves with its psalms and hymns. Some have the laudable habit of summarizing on a card the message that each psalm has for them and with this in their breviary they can more easily make each psalm a prayer. This present book would be a help in such a scheme. It does not pretend to cover all the psalms, and so would not be a book for basic study, but it is an admirable means for providing students and priests with new angles for prayer. The author has devoted most of his life to the formation and sanctification of future priests, but in this book the meditations are intended for a general audience. They are, then, strongly recommended; the translation is done well, with an occasional phrase that could be simplified: "Without losing oneself in an hermetically sealed minutious formula," on page 243 is an example Priests will find this work useful as a book of meditations and it will help them to pray more fruitfully from their breviary.

F.A.M.

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